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VOLUME 516

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 1995

BEGINNING OF TERM

OCTOBER 2, 1995, THROUGH MARCH 19, 1996

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

FRANK D. WAGNER

REPORTER OF DECISIONS

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

WILLIAM H. REHNQUIST, Chief Justice.
JOHN PAUL STEVENS, Associate Justice.
SANDRA DAY O'CONNOR, Associate Justice.
ANTONIN SCALIA, Associate Justice.
ANTHONY M. KENNEDY, Associate Justice.
DAVID H. SOUTER, Associate Justice.
CLARENCE THOMAS, Associate Justice.
RUTH BADER GINSBURG, Associate Justice.
STEPHEN BREYER, Associate Justice.

RETIRED

LEWIS F. POWELL, Jr., Associate Justice.
WILLIAM J. BRENNAN, Jr., Associate Justice.
BYRON R. WHITE, Associate Justice.
HARRY A. BLACKMUN, Associate Justice.

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SUPREME COURT OF THE UNITED STATES

ALLOTMENT OF JUSTICES

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective September 30, 1994, viz.:

For the District of Columbia Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, CLARENCE THOMAS, Associate Justice.

For the Ninth Circuit, SANDRA DAY O'CONNOR, Associate Justice.

For the Tenth Circuit, STEPHEN BREYER, Associate Justice.

For the Eleventh Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Federal Circuit, WILLIAM H. REHNQUIST, Chief Justice.

September 30, 1994.

(For next previous allotment, and modifications, see 502 U. S., p. VI, 509 U. S., p. V, and 512 U. S., p. V.)

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1995

WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY *v.* BARTHOLOMEW

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 94–1419. Decided October 10, 1995

Respondent was convicted in a Washington state court of murder during a robbery. He admitted the robbery but claimed the victim was killed accidentally. When both his brother Rodney and Rodney's girlfriend testified that respondent had told them of his robbery plans and his intent to leave no witnesses, the defense suggested they were lying to downplay Rodney's participation in the crime. The prosecution never disclosed that the two had taken pretrial polygraph examinations and that the examiner had concluded that Rodney's responses to questions about the robbery and murder weapon indicated deception. Respondent later filed for federal habeas, claiming, *inter alia*, that because the polygraph results were material under *Brady* v. *Maryland*, 373 U. S. 83, the prosecution's failure to disclose them justified setting aside the conviction. The District Court denied the writ, but the Ninth Circuit reversed, concluding that the polygraph results, although inadmissible under Washington law, were material under *Brady* because, had respondent's counsel known of the results, he would have had a stronger reason to investigate Rodney's story and might have deposed Rodney and used the answers in Rodney's cross-examination.

Held: The Ninth Circuit's decision is a misapplication of this Court's *Brady* jurisprudence. Evidence is material under *Brady*, and the failure to disclose it justifies setting aside a conviction, only where there

exists a reasonable probability that had the evidence been disclosed the result at trial would have been different. The polygraph results were not evidence at all, and their disclosure would have had no direct effect on the trial's outcome because respondent could have made no mention of them during argument or while questioning witnesses. The Ninth Circuit's judgment is based on mere speculation that disclosure might have led respondent's counsel to conduct additional discovery. Yet counsel's trial strategy did not involve deposing Rodney, and counsel candidly acknowledged that disclosure would not have affected the scope of his cross-examination. Since the case against respondent was overwhelming, even without Rodney's testimony, it should take more than supposition on respondent's weak premises to undermine a court's confidence in the trial's outcome.

Certiorari granted; 34 F. 3d 870, reversed and remanded.

PER CURIAM.

The Court of Appeals for the Ninth Circuit reversed the District Court's denial of habeas relief based on its speculation that the prosecution's failure to turn over the results of a polygraph examination of a key witness might have had an adverse effect on pretrial preparation by the defense. The Court of Appeals assumed, and the parties do not dispute, that the results were inadmissible under state law both for substantive purposes as well as for impeachment. The decision below is a misapplication of our *Brady* jurisprudence, see *Brady* v. *Maryland*, 373 U. S. 83 (1963), and we accordingly reverse the judgment of the Court of Appeals and remand for further proceedings.

I

On August 1, 1981, respondent Dwayne Bartholomew robbed a laundromat in Tacoma, Washington. In the course of the robbery, the laundromat attendant was shot and killed. Two shots were fired: One hit the attendant in the head; the second lodged in a counter near the victim's body. From the beginning, respondent admitted that he committed the robbery and that the shots came from his gun.

The only issue at trial was whether respondent was guilty of aggravated first-degree murder, which requires proof of premeditation; or of first-degree (felony) murder, which does not. Respondent's defense was that the gun, a single action revolver (one that must be cocked manually before each shot), discharged by accident—*twice*.

In addition to the physical evidence concerning the operation of the gun, the prosecution's evidence consisted of the testimony of respondent's brother, Rodney Bartholomew, and of Rodney's girlfriend, Tracy Dormady. Both Rodney and Tracy testified that on the day of the crime they had gone to the laundromat in question to do their laundry, and that respondent was sitting in his car in the parking lot when they arrived. While waiting for their laundry, Rodney sat with his brother in the car. Rodney testified that respondent told him that he intended to rob the laundromat and "leave no witnesses." According to their testimony, Rodney and Tracy left the laundromat soon after the conversation and went to Tracy's house. Respondent arrived at the house a short time later, and when Tracy asked respondent if he had killed the attendant respondent said "he had put two bullets in the kid's head." Tracy also testified that she had heard respondent say that he intended to leave no witnesses. Both Rodney and Tracy's testimony was consistent with their pretrial statements to the police. *State* v. *Bartholomew*, 98 Wash. 2d 173, 176–178, 654 P. 2d 1170, 1173–1174 (1982).

Respondent testified in his own defense. He admitted threatening the victim with his gun and forcing him to lie down on the floor. Respondent said, however, that while he was removing money from the cash drawer his gun accidently fired, discharging a bullet into the victim's head. Respondent further claimed that the gun went off a second time while he was running away. Respondent denied telling Rodney or Tracy that he intended to leave no witnesses. According to his testimony, moreover, Rodney had assisted in

the robbery by convincing the attendant to open the laundromat's door after it had closed for the night, although Rodney left before the crime was committed. *Ibid.* In closing argument the defense sought to discredit Rodney and Tracy's testimony by suggesting that they were lying about the extent of Rodney's participation in the crime. 34 F. 3d 870, 872 (CA9 1994).

At the sentencing phase of the trial (respondent was sentenced to death but his sentence was overturned on appeal and he was resentenced to life imprisonment without the possibility of parole), the prosecution's first witness was respondent's cellmate, Stanley Bell. Bell testified that respondent told him that he made the victim lie on the floor, asked him his age, found out it was 17, replied "[t]oo bad," and shot him. See *State* v. *Bartholomew*, *supra*, at 178, 654 P. 2d, at 1174.

Before trial, the prosecution requested that Rodney and Tracy submit to polygraph examinations. The answers of both witnesses to the questions asked by the polygraph examiner were consistent with their testimony at trial. As part of the polygraph examination, the examiner asked Tracy whether she had helped respondent commit the robbery and whether she had ever handled the murder weapon. Tracy answered in the negative to both questions. The results of the testing as to these questions were inconclusive, but the examiner noted his personal opinion that her responses were truthful. The examiner also asked Rodney whether he had assisted his brother in the robbery and whether at any time he and his brother were in the laundromat together. Rodney responded in the negative to both questions, and the examiner concluded that the responses to the questions indicated deception. Neither examination was disclosed to the defense.

After exhausting his state remedies, respondent filed a habeas action in the District Court for the Western District of Washington, raising, *inter alia*, a *Brady* claim based on the

prosecution's failure to produce the polygraph examinations. The District Court denied the writ, concluding that respondent "fails . . . to show that *evidence* was withheld. *The information withheld only possibly could have led to some admissible evidence.* He fails to show that disclosure of the results of the polygraph to defense counsel would have had a reasonable likelihood of affecting the verdict." App. to Pet. for Cert. B5 (emphasis in original).

On appeal, the Ninth Circuit reversed. 34 F. 3d 870 (1994). The Court of Appeals noted that under Washington law polygraphic examinations are inadmissible in evidence, even for impeachment purposes. See *id.*, at 875 (citing *State* v. *Ellison*, 36 Wash. App. 564, 676 P. 2d 531 (1984)). The court nevertheless reversed the District Court's denial of the writ, concluding that although the results would have been inadmissible at trial, the information was material under *Brady*. The court reasoned that "[h]ad [respondent's] counsel known of the polygraph results, he would have had a stronger reason to pursue an investigation of Rodney's story"; that he "likely would have taken Rodney's deposition" and that in that deposition "might well have succeeded in obtaining an admission that he was lying about his participation in the crime" and "would likely have uncovered a variety of conflicting statements which could have been used quite effectively in cross-examination at trial." 34 F. 3d, at 875–876.

II

If the prosecution's initial denial that polygraph examinations of the two witnesses existed were an intentional misstatement, we would not hesitate to condemn that misrepresentation in the strongest terms. But as we reiterated just last Term, evidence is "material" under *Brady*, and the failure to disclose it justifies setting aside a conviction, only where there exists a "reasonable probability" that had the evidence been disclosed the result at trial would have been different. *Kyles* v. *Whitley*, 514 U. S. 419, 433–434 (1995);

United States v. *Bagley*, 473 U. S. 667, 682 (1985) (opinion of Blackmun, J.); *id.*, at 685 (White, J., concurring in part and concurring in judgment). To begin with, on the Court of Appeals' own assumption, the polygraph results were inadmissible under state law, even for impeachment purposes, absent a stipulation by the parties, see 34 F. 3d, at 875 (citing *State* v. *Ellison*, *supra*), and the parties do not contend otherwise. The information at issue here, then—the results of a polygraph examination of one of the witnesses—is not "evidence" at all. Disclosure of the polygraph results, then, could have had no direct effect on the outcome of trial, because respondent could have made no mention of them either during argument or while questioning witnesses. To get around this problem, the Ninth Circuit reasoned that the information, had it been disclosed to the defense, might have led respondent's counsel to conduct additional discovery that might have led to some additional evidence that could have been utilized. See 34 F. 3d, at 875. Other than expressing a belief that in a deposition Rodney might have confessed to his involvement in the initial stages of the crime—a confession that itself would have been in no way inconsistent with respondent's guilt—the Court of Appeals did not specify what particular evidence it had in mind. Its judgment is based on mere speculation, in violation of the standards we have established.

At trial, respondent's strategy was to discredit Rodney's damaging testimony by suggesting that Rodney was lying in order to downplay his own involvement in the crime. *Id.*, at 872. That strategy did not involve deposing Rodney. It is difficult to see, then, on what basis the Ninth Circuit concluded that respondent's counsel would have prepared in a different manner, or (more important) would have discovered some unspecified additional evidence, merely by disclosure of polygraph results that, as to two questions, were consistent with respondent's preestablished defense.

In speculating that the undisclosed polygraph results might have affected trial counsel's preparation, and hence the result at trial, the Ninth Circuit disagreed with, or disregarded, the view of respondent's own trial counsel. At the evidentiary hearing held in the Federal District Court in this habeas action, respondent's habeas counsel questioned trial counsel on the importance of the polygraph results:

> "Q: And you indicated that your cross-examination of Rodney was, I think, somewhat limited because of concern that—
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> "A: It was limited in my own respect. Nobody tried to limit me. In my opinion, as a trial lawyer, that was a very dangerous witness to me, and I wanted to get as much as I could out of him without recalling the crystal words again. Leave no prisoners.
>
> "Q: Do you think it would have been any help to you in doing that, if you had known of specific questions regarding the offense on which Mr. Rodney Bartholomew had failed a polygraph examination? Would that have perhaps affected the shape of your cross-examination of him?
>
> "A: I think in retrospect they're almost parallel. The questions that he failed were his contribution or implication in the offense, the holdup, with Mr. Dwayne Bartholomew. I believe they were in gloves, so in retrospect they wouldn't have affected it. I would have liked to have known it, Mr. Ford, but I don't think it would have affected the outcome of the case." Tr. 55–56.

Trial counsel's strategic decision to limit his questioning of Rodney undermines the suggestion by the Court of Appeals that counsel might have chosen to depose Rodney had the polygraph results been disclosed. But of even greater importance was counsel's candid acknowledgment that disclosure would not have affected the scope of his cross-

examination. That assessment is borne out by the best possible proof: The Federal District Court below went so far as to permit respondent's habeas counsel, armed with the information about the polygraph examinations, to question Rodney under oath. Even though respondent's counsel was permitted to refer to the polygraph results themselves—reference to which would not be permissible on retrial—counsel obtained no contradictions or admissions out of Rodney. See *id.*, at 84–87.

In short, it is not "reasonably likely" that disclosure of the polygraph results—inadmissible under state law—would have resulted in a different outcome at trial. Even without Rodney's testimony, the case against respondent was overwhelming. To acquit of aggravated murder, the jury would have had to believe that respondent's single action revolver discharged accidently, not once but twice, by tragic coincidence depositing a bullet to the back of the victim's head, execution style, as the victim lay face down on the floor. In the face of this physical evidence, as well as Rodney and Tracy's testimony—to say nothing of the testimony by Bell that the State likely could introduce on retrial—it should take more than supposition on the weak premises offered by respondent to undermine a court's confidence in the outcome.

Whenever a federal court grants habeas relief to a state prisoner the issuance of the writ exacts great costs to the State's legitimate interest in finality. And where, as here, retrial would occur 13 years later, those costs and burdens are compounded many times. Those costs may be justified where serious doubts about the reliability of a trial infested with constitutional error exist. But where, as in this case, a federal appellate court, second-guessing a convict's own trial counsel, grants habeas relief on the basis of little more than speculation with slight support, the proper delicate balance between the federal courts and the States is upset to a degree that requires correction.

* * *

The petition for certiorari is granted, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion. The respondent's motion to proceed *in forma pauperis* is granted.

It is so ordered.

JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER dissent from summary disposition of this case.

Syllabus

TUGGLE *v.* NETHERLAND, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 95–6016. Decided October 30, 1995

Petitioner was convicted of murder in Virginia state court. After the Commonwealth presented unrebutted psychiatric testimony of future dangerousness at his sentencing hearing, the jury found two statutory aggravating circumstances—"future dangerousness" and "vileness"—and sentenced him to death. This Court vacated the State Supreme Court's judgment affirming the conviction and remanded for further consideration in light of the holding in *Ake* v. *Oklahoma*, 470 U. S. 68, that, when the prosecution presents psychiatric evidence of an indigent defendant's future dangerousness in a capital sentencing proceeding, due process requires the State to provide the defendant with the assistance of an independent psychiatrist. On remand, the State Supreme Court invalidated the future dangerousness aggravating factor, but found that the death sentence survived based on the vileness aggravator because, under *Zant* v. *Stephens*, 462 U. S. 862, a death sentence supported by multiple aggravating circumstances need not always be set aside if one aggravator is invalid. The Court of Appeals agreed with this analysis on federal habeas review, construing *Zant* as establishing a rule that in nonweighing States a death sentence may be upheld on the basis of one valid aggravating circumstance, regardless of the reasons for finding another aggravating factor invalid.

Held: The Court of Appeals' interpretation of the *Zant* holding is incorrect. Even after elimination of the invalid aggravator, the death sentence in *Zant* rested on firm ground. Two unimpeachable aggravating factors remained, and there was no claim that inadmissible evidence was before the jury during its sentencing deliberations or that the defendant had been precluded from adducing mitigating evidence. The record here does not provide comparable support for the death sentence. The *Ake* error prevented petitioner from developing his own evidence to rebut the Commonwealth's evidence and to enhance his defense in mitigation. As a result, the Commonwealth's psychiatric evidence went unchallenged, which may have unfairly increased its persuasiveness in the jury's eyes and affected its decision to impose death rather than life imprisonment. *Zant* supports the conclusion that one aggravator's invalidation does not necessarily *require* that a death sentence be set

aside, not the quite different proposition that a valid aggravator's existence always excuses a constitutional error in the admission or exclusion of evidence. Cf. *Johnson* v. *Mississippi*, 486 U. S. 578, 590. This Court does not customarily address in the first instance whether harmless-error analysis is applicable.

Certiorari granted; 57 F. 3d 1356, vacated and remanded.

PER CURIAM.

In *Zant* v. *Stephens*, 462 U. S. 862 (1983), we held that a death sentence supported by multiple aggravating circumstances need not always be set aside if one aggravator is found to be invalid. *Id.*, at 886–888. We noted that our holding did not apply in States in which the jury is instructed to weigh aggravating circumstances against mitigating circumstances in determining whether to impose the death penalty. *Id.*, at 874, n. 12, 890. In this case, the Virginia Supreme Court and the Court of Appeals for the Fourth Circuit construed *Zant* as establishing a rule that in nonweighing States a death sentence may be upheld on the basis of one valid aggravating circumstance, regardless of the reasons for which another aggravating factor may have been found to be invalid. Because this interpretation of our holding in *Zant* is incorrect, we now grant the motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari and vacate the judgment of the Court of Appeals.

I

Petitioner Tuggle was convicted of murder in Virginia state court. At his sentencing hearing, the Commonwealth presented unrebutted psychiatric testimony that petitioner demonstrated "'a high probability of future dangerousness.'" *Tuggle* v. *Commonwealth*, 230 Va. 99, 107, 334 S. E. 2d 838, 844 (1985), cert. denied, *Tuggle* v. *Virginia*, 478 U. S. 1010 (1986). After deliberations, the jury found that the Commonwealth had established Virginia's two statutory aggravating circumstances, "future dangerousness" and "vileness";

it exercised its discretion to sentence petitioner to death.[1] 230 Va., at 108–109, 334 S. E. 2d, at 844–845.

Shortly after the Virginia Supreme Court affirmed petitioner's conviction and sentence, *Tuggle* v. *Commonwealth*, 228 Va. 493, 323 S. E. 2d 539 (1984), we held in *Ake* v. *Oklahoma*, 470 U. S. 68 (1985), that when the prosecutor presents psychiatric evidence of an indigent defendant's future dangerousness in a capital sentencing proceeding, due process requires that the State provide the defendant with the assistance of an independent psychiatrist. *Id.*, at 83–84. Because petitioner had been denied such assistance, we vacated the State Supreme Court's judgment and remanded for further consideration in light of *Ake*. *Tuggle* v. *Virginia*, 471 U. S. 1096 (1985).

On remand, the Virginia Supreme Court invalidated the future dangerousness aggravating circumstance because of the *Ake* error. See *Tuggle* v. *Commonwealth*, 230 Va., at 108–111, 334 S. E. 2d, at 844–846. The court nevertheless reaffirmed petitioner's death sentence, reasoning that *Zant* permitted the sentence to survive on the basis of the vileness aggravator. 230 Va., at 110–111, 334 S. E. 2d, at 845–846. The Court of Appeals agreed with this analysis on federal habeas review, *Tuggle* v. *Thompson*, 57 F. 3d 1356, 1362–1363 (CA4 1995), as it had in the past.[2] Quoting the Virginia Supreme Court, the Court of Appeals stated:

> "'When a jury makes separate findings of specific statutory aggravating circumstances, any of which could support a sentence of death, and one of the circumstances

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[1] Virginia's capital punishment statute involves a two-stage determination. The jury first decides whether the prosecutor has established one or both of the statutory aggravating factors. Va. Code Ann. §§ 19.2–264.4(C)–(D) (1995). If the jury finds neither aggravator satisfied, it must impose a sentence of life imprisonment. *Ibid.* If the jury finds one or both of the aggravators established, however, it has full discretion to impose either a death sentence or a sentence of life imprisonment. *Ibid.*

[2] See *Smith* v. *Procunier*, 769 F. 2d 170, 173 (CA4 1985).

subsequently is invalidated, the remaining valid circumstance, or circumstances, will support the sentence.'" *Id.*, at 1363 (quoting 230 Va., at 110, 334 S. E. 2d, at 845, and citing *Zant*, *supra*).

II

Our opinion in *Zant* stressed that the evidence offered to prove the invalid aggravator was "properly adduced at the sentencing hearing and was fully subject to explanation by the defendant." 462 U. S., at 887. As we explained:

> "[I]t is essential to keep in mind the sense in which [the stricken] aggravating circumstance is 'invalid.' . . . [T]he invalid aggravating circumstance found by the jury in this case was struck down . . . because the Georgia Supreme Court concluded that it fails to provide an adequate basis for distinguishing a murder case in which the death penalty may be imposed from those cases in which such a penalty may not be imposed. The underlying evidence is nevertheless fully admissible at the sentencing phase." *Id.*, at 885–886 (internal citations omitted).

Zant was thus predicated on the fact that even after elimination of the invalid aggravator, the death sentence rested on firm ground. Two unimpeachable aggravating factors remained and there was no claim that inadmissible evidence was before the jury during its sentencing deliberations or that the defendant had been precluded from adducing relevant mitigating evidence.

In this case, the record does not provide comparable support for petitioner's death sentence. The *Ake* error prevented petitioner from developing his own psychiatric evidence to rebut the Commonwealth's evidence and to enhance his defense in mitigation. As a result, the Commonwealth's psychiatric evidence went unchallenged, which may have unfairly increased its persuasiveness in the eyes of the jury.

We may assume, as the Virginia Supreme Court and Court of Appeals found, that petitioner's psychiatric evidence would not have influenced the jury's determination concerning vileness. Nevertheless, the absence of such evidence may well have affected the jury's ultimate decision, based on all of the evidence before it, to sentence petitioner to death rather than life imprisonment.

Although our holding in *Zant* supports the conclusion that the invalidation of one aggravator does not necessarily *require* that a death sentence be set aside, that holding does not support the quite different proposition that the existence of a valid aggravator always excuses a constitutional error in the admission or exclusion of evidence. The latter circumstance is more akin to the situation in *Johnson* v. *Mississippi*, 486 U. S. 578 (1988), in which we held that *Zant* does not apply to support a death sentence imposed by a jury that was allowed to consider materially inaccurate evidence, 486 U. S., at 590, than to *Zant* itself. Because the Court of Appeals misapplied *Zant* in this case, its judgment must be vacated.

III

Having found no need to remedy the *Ake* error in petitioner's sentencing, the Virginia Supreme Court did not consider whether, or by what procedures, the sentence might be sustained or reimposed; and neither the state court nor the Court of Appeals addressed whether harmless-error analysis is applicable to this case. Because this Court customarily does not address such an issue in the first instance, we vacate the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

So ordered.

JUSTICE SCALIA, concurring.

This is a simple case and should be simply resolved. The jury that deliberated on petitioner's sentence had before it

evidence that should have been excluded in light of *Ake* v. *Oklahoma*, 470 U. S. 68 (1985). The Virginia Supreme Court so concluded (in an opinion that is not before us) and, having so concluded, was obliged to determine whether there was reasonable doubt as to whether the constitutional error contributed to the jury's decision to impose the sentence of death. *Satterwhite* v. *Texas*, 486 U. S. 249, 256 (1988). Because it failed to perform that task, the habeas judgment at issue here cannot stand, and a remand is appropriate to allow the Fourth Circuit to review the case under the harmless-error standard appropriate to collateral review. *Brecht* v. *Abrahamson*, 507 U. S. 619, 637–638 (1993).

When these proceedings were before the Virginia Supreme Court after our first remand, petitioner managed to transform the simple question arising from the admission of constitutionally impermissible evidence ("might the constitutional error have affected the decision of the capital sentencing jury?") into a question of seemingly greater moment ("can a death sentence based in part on an 'invalid aggravating circumstance' still stand?"). The Virginia Supreme Court answered the second question, the wrong question, perhaps because it assumed that that could easily be resolved by reference to *Zant* v. *Stephens*, 462 U. S. 862 (1983); and on federal habeas, the District Court and the Fourth Circuit understandably focused upon the consequences of the Virginia Supreme Court's position that the "future dangerousness" aggravating circumstance was rendered "invalid" by the *Ake* error. The Court correctly demonstrates why *Zant* is not applicable here, but regrettably follows the Virginia Supreme Court and the courts below in failing to strip the "invalid aggravating circumstance" camouflage that petitioner has added to a straightforward inadmissible-evidence case.

Syllabus

CITIZENS BANK OF MARYLAND *v.* STRUMPF

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 94–1340. Argued October 3, 1995—Decided October 31, 1995

When respondent filed for relief under the Bankruptcy Code, he had a checking account with, and was in default on the remaining balance of a loan from, petitioner bank. Under the Code, a bankruptcy filing gives rise to an automatic stay of a creditor's "setoff of any debt owing to the debtor that arose before the commencement of the [bankruptcy case] against any claim against the debtor." 11 U. S. C. § 362(a)(7). After respondent had filed in bankruptcy, petitioner placed an "administrative hold" on so much of respondent's account as it claimed was subject to setoff—that is, it refused to pay withdrawals that would reduce the account balance below the sum it claimed to be due on the unpaid loan—and filed a "Motion for Relief from Automatic Stay and for Setoff" under § 362(d). In granting respondent's motion to hold petitioner in contempt, the Bankruptcy Court concluded that petitioner's "administrative hold" constituted a "setoff" in violation of § 362(a)(7). The District Court disagreed and reversed, but was in turn reversed by the Court of Appeals.

Held:

1. Petitioner's refusal to pay its debt to respondent upon the latter's demand was not a setoff within the meaning of § 362(a)(7), and hence did not violate the automatic stay. Petitioner refused to pay, not permanently and absolutely, but merely temporarily while it sought relief under § 362(d) from the automatic stay. The requirement of an intent permanently to settle accounts is implicit in the prevailing state-law rule that a setoff has not occurred until (i) a decision to effectuate it has been made, (ii) some action accomplishing it has been taken, and (iii) a recording of it has been entered. Even if state law were different, the question whether a setoff under § 362(a)(7) has occurred is a matter of federal law, and other provisions of the Bankruptcy Code such as §§ 542(b) and 553(a) would lead this Court to embrace the same intent requirement. Pp. 18–20.

2. Petitioner's refusal to pay its debt to respondent also did not violate § 362(a)(3) or § 362(a)(6) of the Bankruptcy Code. P. 21.

37 F. 3d 155, reversed.

SCALIA, J., delivered the opinion for a unanimous Court.

Irving E. Walker argued the cause for petitioner. With him on the briefs were *James R. Eyler* and *Jefferson V. Wright.*

Miguel A. Estrada argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Days, Assistant Attorney General Argrett, Deputy Solicitor General Wallace, Kent L. Jones,* and *Gary D. Gray.*

Roger Schlossberg argued the cause for respondent. With him on the brief were *John R. Owen, Jr., Brian R. Seeber,* and *Gregory P. Johnson.**

JUSTICE SCALIA delivered the opinion of the Court.

We must decide whether the creditor of a debtor in bankruptcy may, in order to protect its setoff rights, temporarily withhold payment of a debt that it owes to the debtor in bankruptcy without violating the automatic stay imposed by 11 U. S. C. § 362(a).

I

On January 25, 1991, when respondent filed for relief under Chapter 13 of the Bankruptcy Code, he had a checking account with petitioner, a bank conducting business in the State of Maryland. He also was in default on the remaining balance of a loan of $5,068.75 from the bank. Under 11 U. S. C. § 362(a), respondent's bankruptcy filing gave rise to an automatic stay of various types of activity by his creditors, including "the setoff of any debt owing to the debtor that arose before the commencement of the [bankruptcy case] against any claim against the debtor." § 362(a)(7).

On October 2, 1991, petitioner placed what it termed an "administrative hold" on so much of respondent's account as

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*Briefs of *amici curiae* urging reversal were filed for BankAmerica Corp. by *Harold R. Lichterman* and *Michael J. Halloran;* and for the New York Clearing House Association et al. by *Bruce E. Clark, Norman R. Nelson, John J. Gill III, Michael F. Crotty, Leonard J. Rubin, John H. Culver III,* and *Charles P. Seibold.*

it claimed was subject to setoff—that is, the bank refused to pay withdrawals from the account that would reduce the balance below the sum that it claimed was due on respondent's loan. Five days later, petitioner filed in the Bankruptcy Court, under § 362(d), a "Motion for Relief from Automatic Stay and for Setoff." Respondent then filed a motion to hold petitioner in contempt, claiming that petitioner's administrative hold violated the automatic stay established by § 362(a).

The Bankruptcy Court ruled on respondent's contempt motion first. It concluded that petitioner's "administrative hold" constituted a "setoff" in violation of § 362(a)(7) and sanctioned petitioner. Several weeks later, the Bankruptcy Court granted petitioner's motion for relief from the stay and authorized petitioner to set off respondent's remaining checking account balance against the unpaid loan. By that time, however, respondent had reduced the checking account balance to zero, so there was nothing to set off.

The District Court reversed the judgment that petitioner had violated the automatic stay, concluding that the administrative hold was not a violation of § 362(a). The Court of Appeals reversed. "[A]n administrative hold," it said, "is tantamount to the exercise of a right of setoff and thus violates the automatic stay of § 362(a)(7)." 37 F. 3d 155, 158 (CA4 1994). We granted certiorari. 514 U. S. 1035 (1995).

II

The right of setoff (also called "offset") allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding "the absurdity of making A pay B when B owes A." *Studley* v. *Boylston Nat. Bank*, 229 U. S. 523, 528 (1913). Although no federal right of setoff is created by the Bankruptcy Code, 11 U. S. C. § 553(a) provides that, with certain exceptions, whatever right of setoff otherwise exists is preserved in bankruptcy. Here it is undisputed that, prior to the bankruptcy filing, petitioner had the

right under Maryland law to set off the defaulted loan against the balance in the checking account. It is also undisputed that under § 362(a) respondent's bankruptcy filing stayed any exercise of that right by petitioner. The principal question for decision is whether petitioner's refusal to pay its debt to respondent upon the latter's demand constituted an exercise of the setoff right and hence violated the stay.

In our view, petitioner's action was not a setoff within the meaning of § 362(a)(7). Petitioner refused to pay its debt, not permanently and absolutely, but only while it sought relief under § 362(d) from the automatic stay. Whether that temporary refusal was otherwise wrongful is a separate matter—we do not consider, for example, respondent's contention that the portion of the account subjected to the "administrative hold" exceeded the amount properly subject to setoff. All that concerns us here is whether the refusal *was a setoff.* We think it was not, because—as evidenced by petitioner's "Motion for Relief from Automatic Stay and for Setoff"—petitioner did not purport permanently to reduce respondent's account balance by the amount of the defaulted loan. A requirement of such an intent is implicit in the rule followed by a majority of jurisdictions addressing the question, that a setoff has not occurred until three steps have been taken: (i) a decision to effectuate a setoff, (ii) some action accomplishing the setoff, and (iii) a recording of the setoff. See, *e. g.*, *Baker* v. *National City Bank of Cleveland*, 511 F. 2d 1016, 1018 (CA6 1975) (Ohio law); *Normand Josef Enterprises, Inc.* v. *Connecticut Nat. Bank*, 230 Conn. 486, 504–505, 646 A. 2d 1289, 1299 (1994). But even if state law were different, the question whether a setoff *under § 362(a)(7)* has occurred is a matter of federal law, and other provisions of the Bankruptcy Code would lead us to embrace the same requirement of an intent permanently to settle accounts.

Section 542(b) of the Code, which concerns turnover of property to the estate, requires a bankrupt's debtors to "pay" to the trustee (or on his order) any "debt that is property of the estate and that is matured, payable on demand, or payable on order . . . *except to the extent that such debt may be offset under section 553 of this title against a claim against the debtor.*" 11 U. S. C. § 542(b) (emphasis added). Section 553(a), in turn, sets forth a general rule, with certain exceptions, that any right of setoff that a creditor possessed prior to the debtor's filing for bankruptcy is not affected by the Bankruptcy Code. It would be an odd construction of § 362(a)(7) that required a creditor with a right of setoff to do immediately that which § 542(b) specifically excuses it from doing as a general matter: pay a claim to which a defense of setoff applies.

Nor is our assessment of these provisions changed by the fact that § 553(a), in generally providing that nothing in the Bankruptcy Code affects creditors' prebankruptcy setoff rights, qualifies this rule with the phrase "[e]xcept as otherwise provided in this section and in sections 362 and 363." This undoubtedly refers to § 362(a)(7), but we think it is most naturally read as merely recognizing that provision's restriction upon *when* an *actual setoff* may be effected—which is to say, not during the automatic stay. When this perfectly reasonable reading is available, it would be foolish to take the § 553(a) "except" clause as indicating that § 362(a)(7) requires immediate payment of a debt subject to setoff. That would render § 553(a)'s general rule that the Bankruptcy Code does not affect the right of setoff meaningless, for by forcing the creditor to pay *its* debt immediately, it would divest the creditor of the very thing that supports the right of setoff. Furthermore, it would, as we have stated, eviscerate § 542(b)'s exception to the duty to pay debts. It is an elementary rule of construction that "the act cannot be held to destroy itself." *Texas & Pacific R. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 446 (1907).

Finally, we are unpersuaded by respondent's additional contentions that the administrative hold violated §§ 362(a)(3) and 362(a)(6). Under these sections, a bankruptcy filing automatically stays "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate," 11 U. S. C. § 362(a)(3), and "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title," § 362(a)(6). Respondent's reliance on these provisions rests on the false premise that petitioner's administrative hold took something from respondent, or exercised dominion over property that belonged to respondent. That view of things might be arguable if a bank account consisted of money belonging to the depositor and held by the bank. In fact, however, it consists of nothing more or less than a promise to pay, from the bank to the depositor, see *Bank of Marin* v. *England*, 385 U. S. 99, 101 (1966); *Keller* v. *Frederickstown Sav. Institution*, 193 Md. 292, 296, 66 A. 2d 924, 925 (1949); and petitioner's temporary refusal to pay was neither a taking of possession of respondent's property nor an exercising of control over it, but merely a refusal to perform its promise. In any event, we will not give § 362(a)(3) or § 362(a)(6) an interpretation that would proscribe what § 542(b)'s "except[ion]" and § 553(a)'s general rule were plainly intended to permit: the temporary refusal of a creditor to pay a debt that is subject to setoff against a debt owed by the bankrupt.*

The judgment of the Court of Appeals for the Fourth Circuit is reversed.

It is so ordered.

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*We decline to address respondent's contention, not raised below, that the confirmation of his Chapter 13 Plan under 11 U. S. C. § 1327 precluded petitioner's exercise of its setoff right. See *Granfinanciera, S. A.* v. *Nordberg*, 492 U. S. 33, 39 (1989).

Syllabus

LOUISIANA *v.* MISSISSIPPI ET AL.

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 121, Orig. Argued October 3, 1995—Decided October 31, 1995

Louisiana's bill of complaint in this original action asks the Court, *inter alia*, to define the boundary between that State and Mississippi along a 7-mile stretch of the Mississippi River. The case is here on Louisiana's exceptions to the report of the Special Master appointed by the Court.

Held: Louisiana's exceptions are overruled. The case is controlled by the island exception to the rule of the thalweg. The latter rule specifies that the river boundary between States lies along the main downstream navigational channel, or thalweg, and moves as the channel changes with the gradual processes of erosion and accretion. The island exception to that rule provides that if there is a divided river flow around an island, a boundary once established on one side of the island remains there, even though the main downstream navigation channel shifts to the island's other side. Pursuant to the island exception, the Special Master placed the boundary here at issue on the west side of the area here in dispute, thereby confirming Mississippi's sovereignty over the area. The Master took that action after finding that the area derived from Stack Island, which had originally been within Mississippi's boundary before the river's main navigational channel shifted to the east of the island, but which, through erosion on its east side and accretion on its west side, changed from its original location, next to the river's Mississippi bank, to its current location, abutting the Louisiana bank. The Master's findings and conclusions are carefully drawn and well documented with compelling evidence, whereas Louisiana's theory of the case is not supported by the evidence. Pp. 24–28.

Exceptions overruled, and Special Master's report and proposed decree adopted.

KENNEDY, J., delivered the opinion for a unanimous Court.

Gary L. Keyser, Assistant Attorney General of Louisiana, argued the cause for plaintiff. With him on the brief were *Richard P. Ieyoub*, Attorney General, *Jack E. Yelverton*, First Assistant Attorney General, and *E. Kay Kirkpatrick*, Assistant Attorney General.

James W. McCartney argued the cause for defendant Houston Group. *Robert R. Bailess* argued the cause for defendant State of Mississippi. With them on the brief were *Mike Moore*, Attorney General of Mississippi, *Robert E. Sanders*, Assistant Attorney General, and *Charles Alan Wright*.

JUSTICE KENNEDY delivered the opinion of the Court.

Like the shifting river channel near the property in dispute, this litigation has traversed from one side of our docket to the other. We must first recount this procedural history.

In an earlier action, Mississippi citizens sued in the United States District Court for the Southern District of Mississippi to quiet title to the subject property. Certain Louisiana citizens were named as defendants. The parties asserted conflicting ownership claims to an area of about 2,000 acres, stretching seven miles along the Louisiana bank of the Mississippi River, near Lake Providence, Louisiana. The State of Louisiana and the Lake Providence Port Commission intervened in that action and filed a third-party complaint against the State of Mississippi. Concerned, however, with the jurisdiction of the District Court to hear its matter, Louisiana took the further step of instituting an original action in this Court, and it filed a motion here for leave to file a bill of complaint. We denied the motion. *Louisiana* v. *Mississippi*, 488 U. S. 990 (1988).

The District Court heard the case pending before it and, in an order by Judge Barbour, ruled in favor of Mississippi. Louisiana, however, prevailed in the United States Court of Appeals for the Fifth Circuit, 937 F. 2d 247 (1991), and we granted Mississippi's petition for certiorari. 503 U. S. 935 (1992).

After hearing oral argument on both substantive issues and jurisdiction, we resolved only the latter. We held that there was no jurisdiction in the District Court, or in the Court of Appeals, to grant any relief in the quiet title action

to one State against the other, that authority being reserved for jurisdiction exclusive to this Court. *Mississippi* v. *Louisiana*, 506 U. S. 73, 77–78 (1992); see also 28 U. S. C. § 1251(a). We remanded the case so the complaint filed by Louisiana could be dismissed in the District Court and for the Court of Appeals to determine what further proceedings were necessary with respect to the claims of the private parties.

Upon remand, Louisiana asked the District Court to stay further action in the case to allow Louisiana once again to seek permission to file a bill of complaint in this Court. The District Court agreed, noting that our decision on the boundary issue would solve the District Court's choice-of-law problem and would be the fairest method of resolving the fundamental issue for all parties.

Louisiana did file a renewed motion in our Court for leave to file a bill of complaint. We granted it, allowing leave to file against Mississippi and persons called the Houston Group, who asserted ownership to the disputed area and who supported Mississippi's position on the boundary issue. Louisiana asked us to define the boundary between the two States and cancel the Houston Group's claim of title. After granting leave to file, we appointed Vincent L. McKusick, former Chief Justice of the Maine Supreme Judicial Court, as Special Master. The case is now before us on Louisiana's exceptions to his report, and there is no jurisdictional bar to our resolving the questions presented.

We deem it necessary to do no more than give a brief summary of the law and of the Special Master's careful and well-documented findings and conclusions, for Louisiana's exceptions have little merit and must be rejected.

The controlling legal principles are not in dispute. In all four of the prior cases that have involved the Mississippi River boundary between Louisiana and Mississippi, we have applied the rule of the thalweg. *Louisiana* v. *Mississippi*, 466 U. S. 96, 99 (1984); *Louisiana* v. *Mississippi*, 384 U. S. 24, 25–26, reh'g denied, 384 U. S. 958 (1966); *Louisiana* v.

Mississippi, 282 U. S. 458, 459 (1931); *Louisiana* v. *Mississippi*, 202 U. S. 1, 49 (1906). Though there are exceptions, the rule is that the river boundary between States lies along the main downstream navigational channel, or thalweg, and moves as the channel changes with the gradual processes of erosion and accretion. *Louisiana* v. *Mississippi*, 466 U. S., at 99–101; *Arkansas* v. *Tennessee*, 397 U. S. 88, 89–90 (1970). There exists an island exception to the general rule, which provides that if there is a divided river flow around an island, a boundary once established on one side of the island remains there, even though the main downstream navigation channel shifts to the island's other side. *Indiana* v. *Kentucky*, 136 U. S. 479, 508–509 (1890); *Missouri* v. *Kentucky*, 11 Wall. 395, 401 (1871). The island exception serves to avoid disturbing a State's sovereignty over an island if there are changes in the main navigation channel.

The Special Master found that the disputed area derived from an island, known as Stack Island, that had been within Mississippi's boundary before the river's main navigational channel shifted to the east of the island. The Special Master found that, through erosion on its east bank and accretion on its west bank, Stack Island changed from its original location, next to the Mississippi bank of the river, to its current location, abutting the Louisiana bank. Pursuant to the island exception, then, the Special Master placed the boundary on the west side of the disputed area, confirming Mississippi's sovereignty over it. Because the land is located in Mississippi, the Special Master found that Louisiana had no standing to challenge the Houston Group's claim of title.

Louisiana advances a different version of events. It concedes that there did exist a Stack Island in 1881 and that it was formed in Mississippi territory. In that year the land was surveyed for a federal land patent that was later granted to the Houston Group's predecessor in interest, Stephen Blackwell. Louisiana maintains that two years later, in 1883, Stack Island washed away and was replaced by mere

alluvial deposits, which at various times over the last 100 years were not sufficient in size or stability to be deemed an island. Some of these alluvial deposits may or may not have gravitated to the disputed area; nonetheless, according to Louisiana, the disputed area was not formed from anything that can be said to be Stack Island but rather was formed by random accretion to the west bank of the river.

The Special Master rejected Louisiana's theory as not supported by the evidence, and we agree. The only evidence that Louisiana presented to support its theory of Stack Island's disappearance is a Mississippi River Commission map dated April 1883. The map was prepared in 1881, with hydrographic data added in an overlay in 1883. Of particular interest is a solid green line labeled as the "present steamboat channel" that runs over a portion of Stack Island as it was drawn in 1881. Louisiana's expert interpreted that green line to mean that Stack Island had disappeared by 1883.

The Special Master questioned the authenticity of the document because testimony suggested that no such map had been published by the Mississippi River Commission and because a different map published by the Commission the same month, April 1883, showed Stack Island in existence. Even if we assume the document's authenticity, however, it does not settle the question, for we agree with the Special Master that boats could have passed close enough to the island without the entire island having disappeared. Louisiana's reading of the document was contradicted, moreover, by the sworn testimony of Stephen Blackwell and two other witnesses given on May 5, 1885, stating that Blackwell and his family had lived on Stack Island continuously from April 2, 1882, to the date of the testimony and were cultivating 20 acres. Furthermore, in November 1883, six months after Stack Island was supposed to have vanished, the Mississippi River Commission, in reporting on its construction of dikes just north of Stack Island, stated that "'this work showed

good results, forcing the main channel of the river to the right of the island and building a bar to the head of Stack Island, as shown by the high-water survey of April 1883.'" Report of Special Master 20.

Like the Special Master, we are unconvinced that Stack Island disappeared in 1883. Louisiana alleges other disappearances, including one as recently as 1948. We find no credible evidence of these disappearances, but instead find compelling evidence of Stack Island's continued existence. We note first that the north portion of Stack Island has 70-year-old cottonwood trees growing on it and that long-time residents of the area report no disappearances of the island. The record, moreover, contains numerous maps of the region beginning with the 1881 patent survey and coming into the present era, and every one of them shows the existence of Stack Island. With the exception of a single exhibit, dated 1970, all of the maps and mosaics show a land mass that the mapmaker identifies by name as Stack Island, even for the years since 1954 when that land mass has no longer been insular in form. These maps show Stack Island's progression from the Mississippi side of the river to the Louisiana side. When the maps are superimposed one over the other in chronological order, the successive maps show a land mass covering a significant portion of Stack Island shown on the preceding map. The maps satisfy us that Stack Island did not wash away and is now the disputed area.

We need not delve into the proper definition of an island, as Louisiana would have us do, because the Special Master adopted Louisiana's rigorous test, and found that Stack Island satisfied it.

Louisiana raises no exceptions to that portion of the Special Master's report finding that Louisiana lacked standing to challenge the Houston Group's claim of title. Louisiana requests a new trial of the supplemental hearing before the Special Master but offers no sound reason in support of that request, so we must deny it.

We have considered Louisiana's other exceptions and find them insubstantial. The exceptions of Louisiana are overruled, and the Special Master's report and proposed decree are adopted.

It is so ordered.

Syllabus

LIBRETTI *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 94–7427. Argued October 3, 1995—Decided November 7, 1995

During petitioner Libretti's trial on federal drug and related charges, he entered into a plea agreement with the Government, whereby, among other things, he pleaded guilty to engaging in a continuing criminal enterprise under 21 U. S. C. § 848; agreed to surrender numerous items of his property to the Government under § 853, which provides for criminal forfeiture of drug-tainted property; and waived his constitutional right to a jury trial. At the colloquy on the plea agreement, the trial judge explained the consequences of Libretti's waiver of the latter right, but did not expressly advise him as to the existence and scope of his right under Federal Rule of Criminal Procedure 31(e) to a jury determination of forfeitability. After sentencing Libretti to imprisonment and other penalties, the judge entered a forfeiture order as to the property in question despite Libretti's objection to what he saw as a failure to find any factual basis for the entire forfeiture. The Court of Appeals rejected both of Libretti's challenges to the forfeiture order, ruling that Federal Rule of Criminal Procedure 11(f) does not require a district court to ascertain a factual basis for a stipulated forfeiture of assets and that Libretti had waived his Rule 31(e) right to a jury determination of forfeitability.

Held:

1. Rule 11(f)—which forbids a court to enter judgment upon "a plea of guilty" without assuring that there is "a factual basis" for the plea—does not require a district court to inquire into the factual basis for a stipulated forfeiture of assets embodied in a plea agreement. Pp. 37–48.

(a) The Rule's plain language precludes its application to a forfeiture provision contained in a plea agreement. The Rule applies only to "a plea of guilty," which refers to a defendant's admission of guilt of a substantive criminal offense as charged in an indictment and his waiver of the right to a jury determination on that charge. See, *e. g.*, *United States* v. *Broce*, 488 U. S. 563, 570. In contrast, forfeiture is an element of the sentence imposed *following* a plea of guilty, and thus falls outside Rule 11(f)'s scope. That forfeiture operates as punishment for criminal conduct, not as a separate substantive offense, is demonstrated by the

text of the relevant statutory provisions, see, *e. g.*, §§ 848(a) and 853(a), by legislative history, and by this Court's precedents, see, *e. g.*, *Alexander* v. *United States*, 509 U. S. 544, 558. *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617, 628, n. 5, distinguished. In light of such weighty authority, the Court is not persuaded by Libretti's insistence that the forfeiture for which § 853 provides is, in essence, a hybrid that shares elements of both a substantive charge and a criminal punishment. Pp. 38–41.

(b) Libretti's policy arguments for construing Rule 11(f) to reach asset forfeiture provisions of plea agreements—that the Rule's factual basis inquiry (1) is essential to ensuring that a forfeiture agreement is knowing and voluntary, (2) will protect against government overreaching, and (3) is necessary to ensure that the rights of third-party claimants are fully protected—are rejected. Pp. 41–44.

(c) The District Court did not rest its forfeiture order solely on the stipulation contained in the plea agreement. There is ample evidence that the District Judge both understood the statutory requisites for criminal forfeiture and concluded that they were satisfied on the facts at the time the sentence was imposed. Pp. 44–48.

2. On the facts of this case, Libretti's waiver of a jury determination as to the forfeitability of his property under Rule 31(e)—which provides that, "[i]f the indictment . . . alleges that . . . property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the . . . property"—was plainly adequate. That waiver was accomplished by the plea agreement, in which Libretti agreed to forfeiture and waived his right to a jury trial, together with the plea colloquy, which made it abundantly clear that the plea agreement would end any proceedings before the jury and would lead directly to sentencing by the court. Accordingly, Libretti cannot now complain that he did not receive the Rule 31(e) special verdict. The Court rejects his argument that the Rule 31(e) right to a jury determination of forfeitability has both a constitutional and a statutory foundation, and cannot be waived absent specific advice from the district court as to the existence and scope of this right and an express, written waiver. Given that the right, as an aspect of sentencing, does not fall within the Sixth Amendment right to a jury determination of guilt or innocence, see, *e. g.*, *McMillan* v. *Pennsylvania*, 477 U. S. 79, 93, but is merely statutory in origin, the plea agreement need not make specific reference to Rule 31(e). Nor must the district court specifically advise a defendant that a guilty plea will result in waiver of the Rule 31(e) right, since that right is not among the information that must be communicated to a

defendant under Rule 11(c) in order to ensure that a guilty plea is valid. Pp. 48–51.

38 F. 3d 523, affirmed.

O'CONNOR, J., delivered the opinion of the Court, Parts I and II–A of which were joined by REHNQUIST, C. J., and SCALIA, KENNEDY, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., Parts II–B and II–C of which were joined by REHNQUIST, C. J., and KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., and Parts III and IV of which were joined by REHNQUIST, C. J., and SCALIA, KENNEDY, THOMAS, and BREYER, JJ. SOUTER, J., *post*, p. 52, and GINSBURG, J., *post*, p. 53, filed opinions concurring in part and concurring in the judgment. STEVENS, J., filed a dissenting opinion, *post*, p. 54.

Sara Sun Beale, by appointment of the Court, 514 U. S. 1095, argued the cause for petitioner. With her on the briefs was *Paul K. Sun, Jr.*

Malcolm L. Stewart argued the cause for the United States. With him on the brief were *Solicitor General Days*, *Assistant Attorney General Harris*, *Deputy Solicitor General Dreeben*, and *David S. Kris*.*

JUSTICE O'CONNOR delivered the opinion of the Court.†

Petitioner Joseph Libretti pleaded guilty to engaging in a continuing criminal enterprise, in violation of 84 Stat. 1265, 21 U. S. C. § 848 (1988 ed. and Supp. V), and agreed to forfeit numerous items of his property to the Government. We must decide whether Federal Rule of Criminal Procedure 11(f) requires the District Court to determine whether a factual basis exists for a stipulated asset forfeiture embodied in a plea agreement, and whether the Federal Rule of Crimi-

*Briefs of *amici curiae* urging reversal were filed for the Forfeiture Endangers American Rights Foundation by *Brenda Grantland;* and for the National Association of Criminal Defense Lawyers by *David B. Smith* and *Richard J. Troberman.*

†JUSTICE SCALIA and JUSTICE THOMAS join all but Parts II–B and II–C of this opinion. JUSTICE SOUTER and JUSTICE GINSBURG join only Parts I and II.

nal Procedure 31(e) right to a special jury verdict on forfeiture can only be waived following specific advice from the District Court as to the existence and scope of this right and an express, written waiver.

I

In May 1992, Joseph Libretti was charged in a multicount superseding indictment with violations of various federal drug, firearms, and money-laundering laws. Included in the indictment was a count alleging that Libretti engaged in a continuing criminal enterprise (CCE), in violation of 21 U. S. C. §848, by operating a cocaine and marijuana distribution organization in Wyoming and Colorado from 1984 to 1992. Conviction under §848 subjects a defendant to, among other penalties, "the forfeiture prescribed in section 853."[1] 21 U. S. C. §848(a). Accordingly, the indict-

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[1] Section 853(a) provides for criminal forfeiture of drug-tainted property:

"(a) Property subject to criminal forfeiture. Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

"(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

"(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

"(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

"The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II of this chapter, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an

ment further alleged that the Government was entitled to forfeiture of property that was obtained from or used to facilitate Libretti's drug offenses, including, but not limited to, various assets specified in the indictment. See Fed. Rule Crim. Proc. 7(c)(2) ("No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information shall allege the extent of the interest or property subject to forfeiture").

Trial began in September 1992. The Government presented testimony from 18 witnesses, including several individuals who had purchased cocaine or marijuana from Libretti, to establish Libretti's involvement in the possession and distribution of considerable amounts of narcotics. The testimony also reflected Libretti's purchase of a home, an automobile, and dozens of automatic and semiautomatic weapons during a time when he had only modest sources of legitimate income. Finally, the testimony revealed that Libretti stored large amounts of money and drugs in safety deposit boxes and storage facilities away from his home.

Following four days of testimony, Libretti and the Government entered into a plea agreement, by the terms of which Libretti agreed to plead guilty to the CCE count of the indictment (count 6). The Government in return agreed not to pursue additional charges against Libretti and to recommend that he be sentenced to the mandatory minimum of 20 years' imprisonment. Paragraph 10 of the plea agreement provided that Libretti would

> "transfer his right, title, and interest in all of his assets to the Division of Criminal Investigation of the Wyo-

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offense may be fined not more than twice the gross profits or other proceeds."

In addition, § 853(p) provides that, when property subject to forfeiture under subsection (a) cannot be recovered for various reasons, "the court shall order the forfeiture of any other property of the defendant up to the value of" the forfeitable but unrecoverable assets.

> ming Attorney General including, but not limited to: all real estate; all personal property, including guns, the computer, and every other item now in the possession of the United States; all bank accounts, investments, retirement accounts, cash, cashier's checks, travelers checks and funds of any kind."

Two other paragraphs of the plea agreement also made reference to the contemplated forfeiture. Paragraph 2 described the maximum statutory penalty for the offense to which Libretti agreed to plead guilty, which included "forfeiture of all known assets as prescribed in 21 U. S. C. § 853 and assets which are discovered at any later time up to $1,500,000." In paragraph 9, Libretti agreed to "identify all assets that were used to facilitate his criminal activity" and to "provide complete financial disclosure forms requiring the listing of assets and financial interests." Finally, Libretti acknowledged in the agreement "that by pleading guilty to Count Six of the Indictment, he waive[d] various constitutional rights, including the right to a jury trial." It is beyond dispute that Libretti received a favorable plea agreement. The Government recommended that Libretti receive the minimum sentence for conviction under § 848, and agreed to drop all other counts in the indictment. One of those counts charged Libretti with use of a firearm equipped with a silencer during the commission of a drug offense, which mandates a 30-year sentence consecutive to the term of imprisonment on the underlying drug offense. 18 U. S. C. § 924(c)(1). Libretti also faced a potential fine of up to $2 million. 21 U. S. C. §§ 848(a), 853(a).

At the subsequent hearing on the plea agreement, the trial judge advised Libretti of his rights, including his right to a jury trial. The court also clarified the consequences of Libretti's plea, including the facts that a plea of guilty would mean "the end of this trial," that "the jury [would] not . . . decide whether [he's] guilty or not," and that "all the property that's described in . . . Count 6 could be forfeited to

the United States." App. 87, 88. Libretti was then placed under oath. He admitted that his plea was voluntary and indicated that he had read and understood the significance of the indictment and the plea agreement, including the fact that "all of [his] property could be forfeited, the property that is owned by [him] by reason of any drug transaction." *Id.*, at 100. Libretti's only question about the plea agreement pertained to paragraph 2, which provided for future forfeiture of assets up to $1,500,000. The District Court assured Libretti that future forfeiture would be limited to subsequently discovered drug-tainted assets, and that his future legitimate income would not be forfeited. *Id.*, at 88–89. After a lengthy exchange, in which the court reviewed each subparagraph describing the violations that composed the CCE charge and Libretti acknowledged each factual allegation, the District Court found that the guilty plea was voluntary and factually based. *Id.*, at 121.

Following preparation of a presentence report, the District Court held a sentencing hearing, at which Libretti was sentenced to 20 years' imprisonment, to be followed by 5 years of supervised release, and ordered to pay a $5,000 fine as well as a mandatory $50 assessment and to perform 500 hours of community service. The Government filed a motion for forfeiture of Libretti's assets, in keeping with the plea agreement. Libretti's counsel offered no objection at the sentencing hearing, declaring that the forfeiture statute was "a harsh law" and "a bitter pill dealt by Congress," but conceding that it was "a pill we must swallow." *Id.*, at 149. At the conclusion of the hearing, however, Libretti stated on the record that he "would just like to object to what [he saw] as a failure to find any factual basis for the whole forfeiture." *Id.*, at 154. The District Judge noted the objection, but replied that "the evidence that I heard before me in the two *[sic]* days of trial I think is sufficient to warrant the granting of forfeiture. I think I have no alternative." *Ibid.* On December 23, 1992, the District Court entered an order

of forfeiture pursuant to 21 U. S. C. § 853. The order listed specific property to be forfeited, including a parcel of real property in Wyoming, two condominiums, two automobiles, a mobile home, a diamond ring, various firearms, cash, several bank accounts, and a number of cashier's and traveler's checks. App. 155–164. One check was forfeited as a substitute asset. *Id.*, at 162. Libretti filed an appeal from the order of forfeiture.

While this appeal was pending, the District Court entertained third-party claims to some of the property ordered forfeited. See 21 U. S. C. § 853(n). Following a March 1993 hearing, the court amended its forfeiture order to return certain property to the third-party claimants. The court also modified its order with respect to Libretti, stating that "it may be unjust to enforce the specific forfeiture provisions in the plea agreement" and reasoning that Libretti's concession to forfeiture in the plea agreement provided insufficient basis for the order of forfeiture. App. 309. The court ordered a Magistrate to conduct a hearing at which Libretti would be given the opportunity to show, by a preponderance of the evidence, that any portion of his property was not subject to forfeiture. Upon motion by the Government, the District Court stayed the proceedings before the Magistrate Judge pending resolution of Libretti's appeal.

The Court of Appeals for the Tenth Circuit rejected both of Libretti's challenges to the forfeiture order. 38 F. 3d 523 (1994). The court ruled first that the District Court lacked jurisdiction to consider Libretti's claims to the property ordered forfeited at the third-party hearing, because Libretti had filed a notice of appeal. After noting the divergence in the Courts of Appeals regarding the applicability of Rule 11(f) to forfeiture provisions in plea agreements, the court rejected Libretti's contention that Rule 11(f) requires a district court to ascertain a factual basis for a stipulated forfeiture of assets. This conclusion, the Court of Appeals reasoned, follows from the fact that forfeiture "is a part of the

sentence, not a part of the substantive offense." *Id.*, at 528. The Court of Appeals also determined that Libretti had waived his Rule 31(e) right to a jury determination of forfeitability, despite the fact that the District Court did not expressly advise Libretti of the existence and scope of that right during his plea colloquy. *Id.*, at 530–531. We granted certiorari to resolve disagreement among the Circuits as to the applicability of Rule 11(f) to asset forfeiture provisions contained in plea agreements[2] and the requisites for waiver of the right to a jury determination of forfeitability under Rule 31(e).[3] 514 U. S. 1035 (1995).

II

Libretti insists that the District Court's forfeiture order must be set aside (or at least modified), because the court neglected to establish a "factual basis" for forfeiture of the

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[2] Compare *United States* v. *Reckmeyer*, 786 F. 2d 1216, 1222 (CA4) (Rule 11(f) applies to forfeiture provisions in plea agreements), cert. denied, 479 U. S. 850 (1986), and *United States* v. *Roberts*, 749 F. 2d 404, 409 (CA7 1984) (same), cert. denied, 470 U. S. 1058 (1985), with *United States* v. *Boatner*, 966 F. 2d 1575, 1581 (CA11 1992) (Rule 11(f) does not apply to stipulated forfeiture provisions in plea agreements), *United States* v. *Bachynsky*, 949 F. 2d 722, 730–731 (CA5 1991) (Rule 11(f) does not apply to forfeiture provisions, but a forfeiture order will be upheld only if the record provides a factual basis for forfeiture), cert. denied, 506 U. S. 850 (1992), and 38 F. 3d 523, 528 (CA10 1994) (case below).

[3] Compare, *e. g.*, *id.*, at 531 ("specific reference to" the Rule 31(e) right to a special jury verdict is not required when a defendant's "unambiguous plea agreement" and "knowing and voluntary plea" establish waiver); *United States* v. *Robinson*, 8 F. 3d 418, 421 (CA7 1993) ("[A] defendant's waiver of his statutory right [under Rule 31(e)] to have a jury determine which portion of his property is subject to forfeiture is only valid if knowingly and voluntarily made"); *United States* v. *Garrett*, 727 F. 2d 1003, 1012 (CA11 1984) (a defendant has a constitutional right to a jury trial to determine forfeitability; waiver of that right must be in writing), aff'd on other grounds, 471 U. S. 773 (1985); *United States* v. *Zang*, 703 F. 2d 1186, 1194–1195 (CA10 1982) ("The parties can waive their right to a special verdict [under Rule 31(e)] by not making a timely request"), cert. denied, 464 U. S. 828 (1983).

property covered by the order under Federal Rule of Criminal Procedure 11(f). Absent such a finding, Libretti argues, even his concession to forfeiture in the plea agreement cannot authorize the forfeiture.

A

Libretti's first claim is that the Rule by its very terms applies to a forfeiture provision contained in a plea agreement. Accordingly, our analysis must begin with the text of Rule 11(f):

> "Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea."

By its plain terms, the Rule applies only to a "plea of guilty." Our precedent makes clear that this language refers to a defendant's admission of guilt of a substantive criminal offense as charged in an indictment and his waiver of the right to a jury determination on that charge. See, *e. g.*, *United States* v. *Broce*, 488 U. S. 563, 570 (1989) ("By entering a plea of guilty, the accused is not simply stating that he did the discrete acts described in the indictment; he is admitting guilt of a substantive crime"); *North Carolina* v. *Alford*, 400 U. S. 25, 32 (1970); *Boykin* v. *Alabama*, 395 U. S. 238, 242 (1969); *McCarthy* v. *United States*, 394 U. S. 459, 466 (1969). With this definition in mind, we have held that a district judge satisfies the requirements of Rule 11(f) when he "determine[s] 'that the conduct which the defendant admits constitutes the offense charged in the indictment or information or an offense included therein to which the defendant has pleaded guilty.'" *Id.*, at 467 (quoting Advisory Committee's Notes on Fed. Rule Crim. Proc. 11, 18 U. S. C. App., p. 730).

A forfeiture provision embodied in a plea agreement is of an entirely different nature. Forfeiture is an element of the

sentence imposed *following* conviction or, as here, a plea of guilty, and thus falls outside the scope of Rule 11(f). The text of the relevant statutory provisions makes clear that Congress conceived of forfeiture as punishment for the commission of various drug and racketeering crimes. A person convicted of engaging in a continuing criminal enterprise "shall be *sentenced* . . . to the forfeiture prescribed in section 853." 21 U. S. C. §848(a) (emphasis added). Forfeiture is imposed "in addition to any other *sentence*." 21 U. S. C. §853(a) (emphasis added). See also 18 U. S. C. §1963 (forfeiture is imposed "in addition to any other *sentence*" for a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO)). The legislative history of the Comprehensive Crime Control Act of 1984, Pub. L. 98–473, Tit. II, 98 Stat. 1976, also characterizes criminal forfeiture as punishment. See, *e. g.*, S. Rep. No. 98–225, p. 193 (1983) (criminal forfeiture "is imposed as a sanction against the defendant upon his conviction"). Congress plainly intended forfeiture of assets to operate as punishment for criminal conduct in violation of the federal drug and racketeering laws, not as a separate substantive offense.

Our precedents have likewise characterized criminal forfeiture as an aspect of punishment imposed following conviction of a substantive criminal offense. In *Alexander* v. *United States*, 509 U. S. 544 (1993), we observed that the criminal forfeiture authorized by the RICO forfeiture statute "is clearly a form of monetary punishment no different, for Eighth Amendment purposes, from a traditional 'fine.'" *Id.*, at 558. Similarly, in *United States* v. *$8,850*, 461 U. S. 555 (1983), we recognized that a "criminal proceeding . . . may often include forfeiture as part of the sentence." *Id.*, at 567. And in *Austin* v. *United States*, 509 U. S. 602 (1993), we concluded that even the *in rem* civil forfeiture authorized by 21 U. S. C. §§881(a)(4) and (a)(7) is punitive in nature, so that forfeiture imposed under those subsections is subject to the limitations of the Eighth Amendment's Excessive Fines

Clause. 509 U. S., at 619–622. Libretti himself conceded below that criminal forfeiture "is a part of the sentence, not a part of the substantive offense." 38 F. 3d, at 528.

It is true, as Libretti points out, that we said in *Caplin & Drysdale, Chartered* v. *United States*, 491 U. S. 617 (1989), that "forfeiture is a substantive charge in the indictment against a defendant." *Id.*, at 628, n. 5. That statement responded to the defendant's claim that his Sixth Amendment right to counsel "for his defense" could be transformed into a defense to a forfeiture count in the indictment. We intended only to suggest that a defendant cannot escape an otherwise appropriate forfeiture sanction by pointing to his need for counsel to represent him on the underlying charges. Elsewhere in that opinion we recognized that forfeiture is a "criminal sanction," *id.*, at 634, and is imposed as a sentence under § 853, *id.*, at 620, n. 1.

Libretti nonetheless insists that the criminal forfeiture for which § 853 provides is not "simply" an aspect of sentencing, but is, in essence, a hybrid that shares elements of both a substantive charge and a punishment imposed for criminal activity. In support of this contention, Libretti points to three Federal Rules of Criminal Procedure that, according to him, treat forfeiture as a substantive criminal charge. Rule 7(c)(2) provides that "[n]o judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information shall allege the extent of the interest or property subject to forfeiture." If the indictment or information alleges that a defendant's property is subject to forfeiture, "a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any." Fed. Rule Crim. Proc. 31(e). And a finding of forfeitability must be embodied in a judgment. Fed. Rule Crim. Proc. 32(d)(2) ("When a verdict contains a finding of criminal forfeiture, the judgment must authorize the Attorney General to seize the interest or property subject to forfeiture on terms that the court considers proper").

Although the procedural safeguards generated by these Rules are unique in the realm of sentencing, they do not change the fundamental nature of criminal forfeiture. The fact that the Rules attach heightened procedural protections to imposition of criminal forfeiture as punishment for certain types of criminal conduct cannot alter the simple fact that forfeiture is precisely that: punishment. The Advisory Committee's "assumption" that "the amount of the interest or property subject to criminal forfeiture is an element of the offense to be alleged and proved," Advisory Committee's Notes on Fed. Rule Crim. Proc. 31, 18 U. S. C. App., p. 786, does not persuade us otherwise. The Committee's assumption runs counter to the weighty authority discussed above, all of which indicates that criminal forfeiture is an element of the sentence imposed for a violation of certain drug and racketeering laws. Moreover, even supposing that the Committee's assumption is authoritative evidence with respect to the amendments to Rules 7, 31, and 32, it has no bearing on the proper construction of Rule 11. *Tome* v. *United States*, 513 U. S. 150 (1995), is not to the contrary. The *Tome* plurality treated the Advisory Committee's Notes on Federal Rule of Evidence 801(d)(1)(B) as relevant evidence of the drafters' intent *as to the meaning of that Rule.* 513 U. S., at 160–163. In contrast, Libretti seeks to use the Note appended to Rule 31 to elucidate the meaning of an entirely distinct Rule. We cannot agree that the Advisory Committee's Notes on the 1972 amendment to Rule 31(e) shed any particular light on the meaning of the language of Rule 11(f), which was added by amendment to Rule 11 in 1966.

B

Libretti next advances three policy arguments for construing Rule 11(f) to reach asset forfeiture provisions of plea agreements. First, he claims, Rule 11(f)'s factual basis inquiry is essential to ensuring that a forfeiture agreement is knowing and voluntary. Next, Libretti declares that a Rule

11(f) inquiry will protect against Government overreaching. And lastly, Libretti insists that a factual basis inquiry is necessary to ensure that the rights of third-party claimants are fully protected. We consider these contentions in turn.

We are unpersuaded that the Rule 11(f) inquiry is necessary to guarantee that a forfeiture agreement is knowing and voluntary. Whether a stipulated asset forfeiture is "factually based" is a distinct inquiry from the question whether the defendant entered an agreement to forfeit assets knowingly and voluntarily. Libretti correctly points out that Rule 11(f) is intended to ensure that a defendant's "plea of guilty" is knowing and voluntary. *McCarthy*, 394 U. S., at 472 (the Rule 11 inquiry is "designed to facilitate a more accurate determination of the voluntariness of [a] plea"); Advisory Committee's Notes on Fed. Rule Crim. Proc. 11, 18 U. S. C. App., p. 730 (Rule 11(f) protects defendants who do not "realiz[e] that [their] conduct does not actually fall within the charge"). But a "plea of guilty" and a forfeiture provision contained in a plea agreement are different matters altogether. Forfeiture, as we have said, is a part of the sentence. If the voluntariness of a defendant's concession to imposition of a particular sentence is questionable, the relevant inquiry is whether the sentencing stipulation was informed and uncoerced on the part of the defendant, not whether it is factually sound.

Libretti's second argument—that a Rule 11(f) factual basis inquiry is necessary to prevent prosecutorial overreaching—proves equally unavailing. As Libretti properly observes, § 853 limits forfeiture by establishing a factual nexus requirement: Only drug-tainted assets may be forfeited. Libretti suggests that failure to ensure, by means of a Rule 11(f) inquiry, that this factual nexus exists will open the door to voluntary forfeiture agreements that exceed the forfeiture authorized by statute, particularly in light of the Government's direct financial interest in forfeiture as a source of revenue and the disparity in bargaining power between the

Government and a defendant. We recognized in *Caplin & Drysdale* that the broad forfeiture provisions carry the potential for Government abuse and "can be devastating when used unjustly." 491 U. S., at 634. Nonetheless, we concluded that "[c]ases involving particular abuses can be dealt with individually by the lower courts, when (and if) any such cases arise." *Id.*, at 635. However valid Libretti's concern about prosecutorial overreaching may be, Rule 11(f) simply does not, on its face, address it.

We do not mean to suggest that a district court must simply accept a defendant's agreement to forfeit property, particularly when that agreement is not accompanied by a stipulation of facts supporting forfeiture, or when the trial judge for other reasons finds the agreement problematic. In this regard, we note that the Department of Justice recently issued a Revised Policy Regarding Forfeiture by Settlement and Plea Bargaining in Civil and Criminal Actions, Directive 94–7 (Nov. 1994), to instruct that, among the procedures necessary to ensure a valid forfeiture agreement, "[t]he settlement to forfeit property must be in writing and the defendant must concede facts supporting the forfeiture." *Id.*, at 13. In this case, however, we need not determine the precise scope of a district court's independent obligation, if any, to inquire into the propriety of a stipulated asset forfeiture embodied in a plea agreement. We note that the Sentencing Guidelines direct only that a district court "may" accept an agreement reached by the parties as to a specific, appropriate sentence, as long as the sentence is within the applicable guideline range or departs from that range "for justifiable reasons." United States Sentencing Commission, Guidelines Manual §6B1.2(c)(2) (Nov. 1993). Libretti's plea agreement correctly recognized that the District Court was not bound by the parties' agreement as to the appropriate sentence: "[T]he sentencing judge is neither a party to nor bound by this plea agreement and is free to impose whatever sentence he feels is justified." App. 81, ¶ 11.

Libretti finally argues that a Rule 11(f) factual basis inquiry is essential to preserving third-party claimants' rights. A defendant who has no interest in particular assets, the argument goes, will have little if any incentive to resist forfeiture of those assets, even if there is no statutory basis for their forfeiture. Once the Government has secured a stipulation as to forfeitability, third-party claimants can establish their entitlement to return of the assets only by means of the hearing afforded under 21 U. S. C. §853(n). This hearing, Libretti claims, is inadequate to safeguard third-party rights, since the entry of a forfeiture order deprives third-party claimants of the right to a jury trial and reverses the burden of proof. He concludes that insisting on a factual basis inquiry before entry of the forfeiture order will lessen the need for third-party hearings following a broad-ranging forfeiture agreement, and may even result in the conservation of scarce judicial resources. Whatever the merits of this argument as a matter of policy, Congress has determined that §853(n), rather than Rule 11(f), provides the means by which third-party rights must be vindicated. Third-party claimants are not party to Rule 11(f) proceedings, and Libretti's assertion that their interests are best protected therein fits poorly within our adversary system of justice.

C

Contrary to the suggestion of the dissent, *post*, at 57, the District Court did not rest its forfeiture order on nothing more than Libretti's stipulation that certain assets were forfeitable. In fact, there is ample evidence that the District Court both understood the statutory requisites for criminal forfeiture and concluded that they were satisfied on the facts of this case at the time the sentence was imposed. First, the District Judge correctly recognized the factual nexus requirement established by §853. App. 89 (change-of-plea hearing) ("[I]t has to be the product of a drug transaction to be forfeited"). Count 6 of the indictment specified numerous

items of property alleged to be subject to forfeiture under that statute, including a parcel of real property in Wyoming; two automobiles; over $100,000 in cash proceeds from drug transactions; $12,000 in cash that Libretti had stored inside a paint can at his home; a diamond ring; "[a]ll United States currency and travelers checks" recovered from Libretti's storage lockers, safes, home, and person; a mobile home; a computer system; four bank accounts; two GNMA investment certificates; bonds; three cashier's checks; and the contents of two safe deposit boxes. Additional property was identified in a bill of particulars and a restraining order issued, and subsequently amended, by the District Court pursuant to 21 U. S. C. § 853(e) ("Upon application of the United States, the court may enter a restraining order . . . to preserve the availability of property described in subsection (a) of this section for forfeiture under this section"). After one week of trial, the parties submitted to the court an agreement which set out, in detail, specific items of property to be forfeited following Libretti's plea of guilty, including "all real estate; all personal property, including guns, the computer, and every other item now in the possession of the United States; all bank accounts, investments, retirement accounts, cash, cashier's checks, travelers checks and funds of any kind." App. 81. The plea agreement also explained that the maximum penalty for the offense to which Libretti agreed to plead guilty included "forfeiture of all known assets as prescribed in 21 U. S. C. § 853 and assets which are discovered at any later time up to $1,500,000." App. 79.

Before issuing the order of forfeiture, the trial judge listened to four days of testimony, in which Government witnesses detailed numerous drug transactions with Libretti. See, *e. g.*, 2 Tr. 124–126, 137–139; 3 *id.*, at 271–272; 4 *id.*, at 495–501; 5 *id.*, at 946–949. One witness recounted Libretti's purchase of a home in 1985 with a $100,000 down payment, at a time during which he was earning an annual salary of approximately $20,000. 2 *id.*, at 179–180, 210–216; App. 123

(Presentence Report, Prosecutor's Statement ¶ 6); Presentence Report ¶ 37. Another told of Libretti's purchase of a sports car with a check for $19,114. 5 Tr. 907–913. Other witnesses described Libretti's possession, in his capacity as a federal firearms dealer, of numerous automatic and semiautomatic firearms, later determined to be worth at least $243,000. See, *e. g.*, 2 *id.*, at 140–141, 156–162; 5 *id.*, at 844–853; App. 123 (Presentence Report, Prosecutor's Statement ¶ 9). One witness testified that Libretti admitted having "quite a bit of money stashed away" in safe deposit boxes, 5 Tr. 834, and on at least one occasion had "a couple thousand" dollars in cash "sitting around," *id.*, at 835. Other witnesses established that Libretti often stored cash and drugs in safe deposit boxes and storage facilities away from his home. See, *e. g.*, 2 *id.*, at 155–156; 4 *id.*, at 718–720, 738–743. One of Libretti's drug customers testified that he broke into a storage facility at which Libretti had rented a storage locker and discovered a briefcase containing a large amount of cash (later estimated in the presentence report to be approximately $150,000), a large block of cocaine, and five large trash bags, at least one of which was filled with marijuana. *Id.*, at 558–566, 588–589.

Prior to sentencing, the court received the presentence investigation report, which contained, among other things, a summary of Libretti's legitimate income during the relevant time periods. During 1985 and 1986, Libretti worked as a restaurant and grocery store manager, earning approximately $20,000 per year. In early 1987, he was employed as a temporary stock broker and was paid on commission only. Later that year, he managed a Tenneco thrift store. In 1989, Libretti reported an income of approximately $50,000 from his firearms business. During 1988 and 1989, Libretti also owned a partnership interest in two condominiums; he reported that the rental income did not meet his expenses and thus he did not earn a profit. Between June 1989 and his arrest in December 1991, Libretti worked as a full-time

accounting supervisor, earning a salary of approximately $40,000 per year. Presentence Report ¶¶ 35–37.

Included in the presentence report was a prosecutor's statement detailing the amounts of cocaine and marijuana involved in Libretti's drug operation and various sums of money Libretti earned from his drug dealing. App. 122–135. The statement described Libretti's substantial expenditures, including the $100,000 cash deposit on a house in 1985 ($72,000 of which was derived from Libretti's sale of drugs) and the purchase of a $20,000 mortgage in 1986 (again, allegedly with proceeds from his distribution of drugs). *Id.*, at 123. Paragraph 12 reported that Libretti had opened a safe deposit box in 1987 in which he placed $48,000 in cash. On another occasion, Libretti placed approximately $10,000 into an account bearing his brother's name. *Id.*, at 124–125. The statement described Libretti's practice of storing large amounts of cash and drugs in safes, storage lockers, and safe deposit boxes. *Id.*, at 124, 129. Libretti also stored drugs, a weapon, and a cashier's check for $65,000 in his personal locker at his place of employment. *Id.*, at 129. The statement related Libretti's investment of at least $243,000 in numerous firearms. *Id.*, at 123–124. These funds again reportedly derived from Libretti's drug distribution activities; the statement indicated that "Libretti's gun business was used to launder drug proceeds" and served as a means by which Libretti could "justify his income since [he] was not working at times during the conspiracy and, when he was working, was not bringing in the money that would pay for the Lakewood house and other investments." *Id.*, at 127. Finally, the statement suggested that substantial sums of cash derived from Libretti's drug activities were never recovered by law enforcement authorities. *Id.*, at 134. Defense counsel conceded at the sentencing hearing that "the [presentence] report of Mr. Libretti's background, education, financial circumstances are *[sic]* accurate." *Id.*, at 138. In light of these facts, defense counsel acknowledged that "the

forfeiture is going to take regular money and illegal money under the substitute assets" provision of § 853. *Id.*, at 149.

In view of the plea agreement, the indictment, and the amended restraining order, the trial judge issued an order forfeiting to the Government the Wyoming lot, both condominiums, both automobiles, $8,000 in cash proceeds of Libretti's drug transactions, the diamond ring, the mobile home, all firearms, an IRA account, three bank accounts, bonds, two GNMA certificates, and several cashier's and traveler's checks. One check was ordered forfeited as a substitute asset "for assets dissipated and otherwise expended by Libretti." *Id.*, at 162.

It is not, as Libretti maintains, implausible that the court concluded on the record before it that the forfeiture order was appropriate. Following Libretti's objection to the forfeiture order for lack of factual foundation, the trial judge replied that "the evidence that I heard before me in the two *[sic]* days of trial I think is sufficient to warrant the granting of forfeiture." *Id.*, at 154. We cannot say that the District Judge, despite his subsequent uncertainty, erred in issuing the forfeiture order on the facts before him.

III

Libretti also challenges the adequacy of his waiver of a jury determination as to the forfeitability of his property under Federal Rule of Criminal Procedure 31(e). The right, he argues, has both a constitutional and a statutory foundation, and cannot be waived absent specific advice from the district court as to the nature and scope of this right and an express, written agreement to forgo the jury determination on forfeitability. We disagree.

Federal Rule of Criminal Procedure 31(e) provides that, "[i]f the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any." Libretti would have

us equate this statutory right to a jury determination of forfeitability with the familiar Sixth Amendment right to a jury determination of guilt or innocence. See, *e. g.*, *United States* v. *Gaudin*, 515 U. S. 506, 511 (1995) ("The Constitution gives a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged"). Without disparaging the importance of the right provided by Rule 31(e), our analysis of the nature of criminal forfeiture as an aspect of sentencing compels the conclusion that the right to a jury verdict on forfeitability does not fall within the Sixth Amendment's constitutional protection. Our cases have made abundantly clear that a defendant does not enjoy a constitutional right to a jury determination as to the appropriate sentence to be imposed. See, *e. g.*, *McMillan* v. *Pennsylvania*, 477 U. S. 79, 93 (1986) ("[T]here is no Sixth Amendment right to jury sentencing, even where the sentence turns on specific findings of fact"); *Cabana* v. *Bullock*, 474 U. S. 376, 385 (1986) ("The decision whether a particular punishment . . . is appropriate in any given case is not one that we have ever required to be made by a jury"); *Spaziano* v. *Florida*, 468 U. S. 447, 459 (1984) (no right to a jury determination as to the imposition of the death penalty).

Given that the right to a jury determination of forfeitability is merely statutory in origin, we do not accept Libretti's suggestion that the plea agreement must make specific reference to Rule 31(e). Nor must the district court specifically advise a defendant that a plea of guilty will result in waiver of the Rule 31(e) right. Federal Rule of Criminal Procedure 11(c) details the information a district court must communicate to a defendant in order to ensure that a guilty plea is valid. Advisory Committee's Notes on 1974 Amendment of Fed. Rule Crim. Proc. 11(c), 18 U. S. C. App., p. 731 (the Rule "codifies . . . the requirements of *Boykin* v. *Alabama*, 395 U. S. 238 . . . (1969), which held that a defendant must be apprised of the fact that he relinquishes certain *constitu-*

tional rights by pleading guilty") (emphasis added). Specific advice regarding the Rule 31(e) right is not among the Rule 11(c) safeguards, and we decline Libretti's invitation to expand upon the required plea colloquy. That is not to say, however, that a trial judge may not mention the nature and scope of the Rule 31(e) right during a plea colloquy. In fact, the Advisory Committee's Notes make plain that "a judge is free to" inform a defendant about specific consequences that might follow from a plea of guilty if the judge "feels a consequence of a plea of guilty in a particular case is likely to be of real significance to the defendant." Advisory Committee's Notes on 1974 Amendment of Fed. Rule Crim. Proc. 11, 18 U. S. C. App., p. 731.

On these facts, Libretti's waiver of a jury determination as to the scope of forfeiture was plainly adequate. In the plea agreement, Libretti "acknowledge[d] that by pleading guilty to Count Six of the Indictment, he waive[d] various constitutional rights, including the right to a jury trial and a speedy trial." App. 80. He stipulated to the forfeiture of specific assets. *Id.*, at 80–81. The District Court engaged Libretti in an extensive colloquy at his change-of-plea hearing, during which the court reviewed with Libretti the consequences of his guilty plea, including the fact that the plea would result in dismissal of the jury. Libretti's responses made clear that he fully understood the nature and consequences of his guilty plea and was prepared to be sentenced in accordance with the plea agreement. At the sentencing hearing, neither Libretti nor his counsel specifically objected to resolution of forfeiture issues by the court without a jury. See, *e. g.*, *id.*, at 150, 154.

In addition, Libretti was represented by counsel at all stages of trial and sentencing. Apart from the small class of rights that require specific advice from the court under Rule 11(c), it is the responsibility of defense counsel to inform a defendant of the advantages and disadvantages of a plea agreement and the attendant statutory and con-

stitutional rights that a guilty plea would forgo. Libretti has made no claim of ineffectiveness of counsel before this Court. As we noted in *Broce*, "[a] failure by counsel to provide advice may form the basis of a claim of ineffective assistance of counsel, but absent such a claim it cannot serve as the predicate for setting aside a valid plea." 488 U. S., at 574.

Of course, a district judge must not mislead a defendant regarding the procedures to be followed in determining whether the forfeiture contemplated in a plea agreement will be imposed, nor should the court permit a defendant's obvious confusion about those procedures to stand uncorrected. On this record, however, we find no hint that Libretti labored under any misapprehension. Although the District Judge did not spell out for Libretti that, had he declined to enter a plea of guilty, and had the trial gone forward, the jury would eventually have been required to determine which of Libretti's assets were forfeitable, when viewed in its entirety, the plea colloquy made it abundantly clear that the plea agreement would end any proceedings before the jury and would lead directly to sentencing by the court. As the Court of Appeals observed, "there is no evidence at [the change-of-plea] hearing that [Libretti] wanted a jury trial on the forfeiture issue, or thought he was going to have one." 38 F. 3d, at 531. Taken together, the plea agreement and the plea colloquy waived Libretti's right to insist on a jury determination of forfeitability under Rule 31(e).

IV

For these reasons, we reject Libretti's challenges to the District Court's forfeiture order. Under the plain language of Rule 11(f), the District Court is not obliged to inquire into the factual basis for a stipulated forfeiture of assets embodied in a plea agreement. And because Libretti agreed to this forfeiture and waived his "right to a jury trial," he cannot now complain that he did not receive the special jury

verdict on forfeitability for which Rule 31(e) provides. Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE SOUTER, concurring in part and concurring in the judgment.

I join in the judgment and Parts I and II of the Court's opinion. I would not reach the question of a Sixth Amendment right to trial by jury on the scope of forfeiture or whether the Constitution obliges a trial court to advise a defendant of whatever jury trial right he may have. In cases like this one, any such right to instruction will be satisfied by the court's obligatory advice to the defendant of the right to jury trial generally. See Fed. Rule Crim. Proc. 11(c)(3) ("Before accepting a plea of guilty . . . the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, . . . that the defendant has . . . the right to be tried by a jury"). It is reasonable to understand the scope of the right as covering all matters charged in the indictment, which under Rule 7(c)(2) will include the forfeiture claim. Since a defendant will have been provided a copy of the indictment, see Fed. Rule Crim. Proc. 10 ("The defendant shall be given a copy of the indictment or information before being called upon to plead"), and will have heard it read or summarized, see *ibid.* ("Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to the defendant the substance of the charge"), he will naturally understand that his right to jury trial covers a verdict on the forfeiture claim.

If, in speaking to the defendant or in other statements within his hearing, the court should affirmatively say or suggest that the right to jury trial would not extend to the forfeiture, that would be error under the current law, whatever the constitutional status of that right may be. While there is some reason to argue that the court's colloquy with the

defendant in this case was misleading, see App. 87 ("[I]f you plead guilty . . . . the jury is not going to decide whether you're guilty or not"), I think JUSTICE GINSBURG is right to conclude otherwise, for the reasons given in her separate opinion.

JUSTICE GINSBURG, concurring in part and concurring in the judgment.

Rule 11(f), I agree for reasons the Court states, does not impose on district courts an obligation to find a "factual basis" for asset forfeitures stipulated in a plea agreement. I therefore join in Parts I and II of the Court's opinion and concur in the judgment. But the jury-trial right for which Rule 31(e) provides, as I see it, must be known in order to be given up voluntarily. I therefore set out briefly my view of the second issue the Court decides.

At the plea hearing, the District Court carefully and comprehensively informed Libretti that his guilty plea would waive his right to jury trial on the crimes charged in the indictment. The court did not then refer to the unusual jury-trial right on criminal forfeiture provided by Rule 31(e) of the Federal Rules of Criminal Procedure:

> "If the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any."

See also Fed. Rule Crim. Proc. 7(c)(2) ("No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information shall allege the extent of the interest or property subject to forfeiture"); Fed. Rule Crim. Proc. 11(c)(1) (court must address defendant personally in open court and inform him of "the nature of the charge" when plea of guilty is offered).

Just as intelligent waiver of trial by jury on the underlying offense requires that the defendant be advised of the right,

so waiver of the extraordinary jury-trial right on forfeiture should turn on the defendant's awareness of the right his plea will override. That right, uncommon as it is, may not be brought home to a defendant through a bare reading of the forfeiture clause in the indictment. Clarity, however, is easily achieved. In cases like Libretti's, trial judges can readily avoid unknowing relinquishment of the procedural right to a jury verdict on forfeiture by routinely apprising defendants, at plea hearings, of Rule 31(e)'s atypical special-verdict requirement.

Failure to mention Rule 31(e) at Libretti's plea hearing is not cause for revisiting the forfeiture of his property, however, because at least two pretrial references were made to Rule 31(e)'s requirement. First, there was a brief exchange between court and counsel on the need for a special-verdict form. 1 Tr. 8. Second, and more informative, the trial judge explained to the jurors during *voir dire* that the indictment included

> "a provision for a forfeiture of all property of any kind constituting or derived from proceeds that Mr. Libretti received directly or indirectly from engaging in said continuing criminal enterprise. And that's a subject matter on which the jury will be required at the end of the case to answer a specific question relating to it." *Id.*, at 188.

In view of this statement to the lay triers—telling them in Libretti's presence that they would be called upon specifically to decide the matter of forfeiture—Libretti cannot persuasively plead ignorance of the special-verdict right Rule 31(e) prescribes.

JUSTICE STEVENS, dissenting.

While I agree with the Court's conclusions (1) that Federal Rule of Criminal Procedure 11(f) does not create a duty to determine that there is a factual basis for a forfeiture of

assets pursuant to 21 U. S. C. § 853 and (2) that the record in this case does establish a factual basis for forfeiting the assets described in Count 6 of the indictment, I believe it important to emphasize the underlying proposition that the law—rather than any agreement between the parties—defines the limits on the district court's authority to forfeit a defendant's property. Moreover, entirely apart from Rule 11(f), the district court has a legal obligation to determine that there is a factual basis for the judgment entered upon a guilty plea. For that reason, the Court of Appeals was plainly wrong in holding that simply because the defendant unequivocally agreed to "'forfeit all property,'" the *law* authorized the forfeiture of all of his assets. 38 F. 3d 523, 526 (CA10 1994).

The facts of this case well illustrate the particular need for the district court to determine independently that a factual basis supports forfeiture judgments that it enters pursuant to plea agreements. As the Court correctly notes, this defendant received a favorable plea agreement. The record demonstrates that the facts would have supported a much longer term of imprisonment than was actually imposed. In such circumstance, it is not unthinkable that a wealthy defendant might bargain for a light sentence by voluntarily "forfeiting" property to which the government had no statutory entitlement. This, of course, is not the law. No matter what a defendant may be willing to pay for a favorable sentence, the law defines the outer boundaries of a permissible forfeiture. A court is not free to exceed those boundaries solely because a defendant has agreed to permit it to do so. As Judge Cudahy aptly put it, "[t]he mere fact that the defendant has agreed that an item is forfeitable, in a plea agreement, does not make it so." *United States* v. *Roberts*, 749 F. 2d 404, 409 (CA7 1984).

The proposition that the law alone defines the limits of a court's power to enter a judgment can be traced to this Court's early precedents. In *Bigelow* v. *Forrest*, 9 Wall. 339

(1870), the Court explained that a court "transcend[s] its jurisdiction" when it orders the forfeiture of property beyond that authorized by statute. *Id.*, at 351. In a similar vein, *Ex parte Lange*, 18 Wall. 163 (1874), concluded that a judgment imposing punishment in excess of statutory authorization is not merely voidable, but "void." *Id.*, at 178. Precisely because extrastatutory punishments implicate the very power of a court to act, the district court must, entirely apart from the specific procedure mandated by Rule 11(f), satisfy itself that there is a factual basis for any judgment entered pursuant to a guilty plea that threatens to exceed statutory bounds.[1] Were a court to do otherwise, it would permit the parties to define the limits of its power.

In sum, Rule 11(f) does not create a substantive right. Instead, it prescribes a procedure that is intended to protect every defendant's pre-existing right not to receive any sentence beyond statutorily prescribed limits. Rule 11(f) states that if there is no factual basis for the guilty plea, the court has no power to "enter a judgment upon such plea . . . ." In so stating, the Rule does not impliedly authorize courts to impose sentences upon a plea of guilty greater than the maximum prescribed for the admitted offense. The pre-existing substantive limits on the court's power to impose a judgment upon a plea of guilty, which apply to the forfeiture aspect of the judgment as well as to the finding of guilt, preclude such a result. Nothing in the Rule suggests otherwise.

Because the foregoing thoughts are implicit in this Court's independent examination of the record to assure itself that there is indeed a factual basis for the forfeiture of the property described in Count 6, and for the further conclusion that the forfeiture order does not extend beyond the line that the law has drawn, I endorse almost all of the Court's opinion.

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[1] Of course, the court's power to act is not similarly implicated when it imposes a sentence that is arguably erroneous but nonetheless within the range authorized by statute.

Nevertheless, I do not agree with the Court's disposition of the case because I believe the opinion of the Court of Appeals can fairly be read to approve of the forfeiture of *all* petitioner's property, rather than just the assets described in Count 6.[2]

Although the majority marshals ample support for much of the forfeiture authorized here, the record simply does not provide a factual basis for the whole of it. For example, nothing in the Court's opinion provides a basis for concluding that the small bank account that petitioner opened while a young boy, and which had not been augmented since 1975, should be subject to forfeiture. Nor can all of his assets necessarily be deemed subject to forfeiture as "substitute assets." As the Court recognizes, the District Court determined that only one check was subject to forfeiture on that basis. *Ante*, at 48.

The sole basis for the wholesale forfeiture affirmed here stems from one paragraph in the defendant's plea agreement which states his willingness to "transfer his right, title, and interest in all of his assets to the Division of Criminal Investigation of the Wyoming Attorney General."[3] App. 81. As I have explained, however, a defendant's bare stipulation does not determine what property a court may forfeit. The district court must independently make that determination. Here, the record reveals that the District Court had *not* determined that a factual basis existed for the sweeping forfeiture it ordered. Indeed, the District Court subsequently sought to hold a hearing for the very purpose of determining whether a factual basis existed. The District Court was precluded from undertaking that necessary inquiry only because this *pro se* petitioner filed an early notice of appeal

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[2] Moreover, I agree with JUSTICE GINSBURG that the jury trial right that Rule 31(e) provides must be known in order to be given up voluntarily.

[3] The record does not make clear why the property would be transferred to state, rather than federal, law enforcement authorities.

that divested the court of jurisdiction. However, that jurisdictional bar did not, and could not, relieve the District Court of its prior duty to find a factual basis for its forfeiture judgment.

Because the District Court had not assured itself that its judgment fell within the bounds established by law, and because the record does not support the conclusion that it did, I would vacate and remand for further proceedings consistent with this opinion.

Syllabus

FIELD ET AL. *v.* MANS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 94–967. Argued October 2, 1995—Decided November 28, 1995

After respondent Mans filed for relief under Chapter 11 of the Bankruptcy Code, petitioners William and Norinne Field alleged, in effect, that letters Mans had written to them constituted fraudulent representations on which they relied in continuing to extend credit to a corporation controlled by Mans, and that, accordingly, Mans's obligation to them as guarantor of the corporation's debt should be excepted from discharge under 11 U. S. C. § 523(a)(2)(A) as a debt resulting from fraud. The Bankruptcy Court found that Mans's letters constituted false representations, but followed Circuit precedent in requiring that the Fields show their reasonable reliance on the letters. Finding the Fields unreasonable in relying without further enquiry on Mans's misrepresentations, the court held Mans's debt dischargeable. The District Court and the Court of Appeals affirmed.

Held: The standard for excepting a debt from discharge as a fraudulent representation within the meaning of § 523(a)(2)(A) is not reasonable reliance but the less demanding one of justifiable reliance on the representation. Pp. 64–77.

(a) Section 523(a)(2)(A) had an antecedent in the 1903 amendments to the Bankruptcy Act of 1898, and has changed only slightly since 1903, from "false pretenses or false representations" to "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." Section 523(a)(2)(B), which applies to false financial statements in writing, also grew out of a 1903 amendment to the Bankruptcy Act of 1898, but it changed more significantly over the years. One of these changes occurred in 1978, when Congress added a new element of reasonable reliance. Pp. 64–66.

(b) The text of § 523(a)(2)(A) does not mention the level of reliance required, and the Court rejects as unsound the argument that the addition of reasonable reliance to § 523(a)(2)(B) alone supports an inference that, in § 523(a)(2)(A), Congress did not intend to require reasonable reliance. That argument relies on the apparent negative pregnant, under the rule of construction that an express statutory requirement in one place, contrasted with statutory silence in another, shows an intent

to confine the requirement to the specified instance. Assuming this argument to be sound, it would prove at most that the reasonableness standard was not intended, but would not reveal the correct standard. Here, however, there is reason to reject the negative pregnant argument even as far as it goes. If the argument proves anything here, it proves too much: this reasoning would also strip § 523(a)(2)(A) of any requirement to establish causation and scienter, an odd result that defies common sense. Moreover, the argument ignores the fact that § 523(a)(2)(A) refers to common-law torts and § 523(a)(2)(B) does not. The terms used in paragraph (A) imply elements that the common law has defined them to include, whereas the terms in paragraph (B) are statutory creations. Pp. 66–69.

(c) This Court has an established practice of finding Congress's meaning in the generally shared common law where, as here, common-law terms are used without further specification. Since the District Court treated Mans's conduct as amounting to fraud, the enquiry here is into the common-law understanding of "actual fraud" in 1978, when it was added to § 523(a)(2)(A). The Restatement (Second) of Torts states that justifiable, rather than reasonable, reliance is the applicable standard. The Restatement rejects a general, reasonable person standard in favor of an individual standard that turns on the particular circumstances, and it provides that a person is justified in relying on a factual representation without conducting an investigation, so long as the falsity of the representation would not be patent upon cursory examination. Scholarly treatises on torts, as well as state cases, similarly applied a justifiable reliance standard. The foregoing analysis does not relegate the negative pregnant to the rubbish heap, but merely indicates that its force is weakest when it suggests foolish results at odds with other textual pointers. The Court's reading also does not leave reasonableness irrelevant, for the greater the distance between the reliance claimed and the limits of the reasonable, the greater the doubt about reliance in fact. Pp. 69–76.

(d) It may be asked whether it makes sense to protect creditors who were not quite reasonable in relying on a fraudulent representation, but to apply a different rule when fraud is carried to the point of a written financial statement. This ostensible anomaly may be explained by Congress's apparent concerns about creditors' misuse of financial statements. Pp. 76–77.

(e) The Bankruptcy Court's reasonable person test entailing a duty to investigate clearly exceeds the demands of the justifiable reliance standard that applies under § 523(a)(2)(A). P. 77.

36 F. 3d 1089, vacated and remanded.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, THOMAS, and GINSBURG, JJ., joined. GINSBURG, J., filed a concurring opinion, *post*, p. 78. BREYER, J., filed a dissenting opinion, in which SCALIA, J., joined, *post*, p. 79.

Christopher J. Seufert argued the cause for petitioners. With him on the brief was *William J. Schultz.*

Alan Jenkins argued the cause for the United States as *amicus curiae.* With him on the brief were *Solicitor General Days, Assistant Attorney General Hunger, Deputy Solicitor General Bender, William Kanter,* and *Bruce G. Forrest.*

W. E. Whittington IV, by appointment of the Court, 515 U. S. 1156, argued the cause for respondent. With him on the brief was *Geoffrey J. Vitt.**

JUSTICE SOUTER delivered the opinion of the Court.

The Bankruptcy Code's provisions for discharge stop short of certain debts resulting from "false pretenses, a false representation, or actual fraud." 11 U. S. C. § 523(a)(2)(A). In this case we consider the level of a creditor's reliance on a fraudulent misrepresentation necessary to place a debt thus beyond release. While the Court of Appeals followed a rule requiring reasonable reliance on the statement, we hold the standard to be the less demanding one of justifiable reliance and accordingly vacate and remand.

I

In June 1987, petitioners William and Norinne Field sold real estate for $462,500 to a corporation controlled by respondent Philip W. Mans, who supplied $275,000 toward the purchase price and personally guaranteed a promissory note for $187,500 secured by a second mortgage on the property. The mortgage deed had a clause calling for the Fields' con-

**Gary Klein* filed a brief for the National Association of Consumer Bankruptcy Attorneys for the United States as *amicus curiae* urging affirmance.

sent to any conveyance of the encumbered real estate during the term of the secured indebtedness, failing which the entire unpaid balance on the note would become payable upon a sale unauthorized.

On October 8, 1987, Mans's corporation triggered application of the clause by conveying the property to a newly formed partnership without the Fields' knowledge or consent. The next day, Mans wrote to the Fields asking them not for consent to the conveyance but for a waiver of their rights under the due-on-sale clause, saying that he sought to avoid any claim that the clause might apply to arrangements to add a new principal to his land development organization. The letter failed to mention that Mans had already caused the property to be conveyed. The Fields responded with an offer to waive if Mans paid them $10,500. Mans answered with a lower bid, to pay only $500, and again failed to disclose the conveyance. There were no further written communications.

The ensuing years brought a precipitous drop in real estate prices, and on December 10, 1990, Mans petitioned the United States Bankruptcy Court for the District of New Hampshire for relief under Chapter 11 of the Bankruptcy Code. On the following February 6, the Fields learned of the October 1987 conveyance, which their lawyer had discovered at the registry of deeds. In their subsequent complaint in the bankruptcy proceeding, they argued that some $150,000 had become due upon the 1987 conveyance for which Mans had become liable as guarantor, and that his obligation should be excepted from discharge under § 523(a)(2)(A) of the Bankruptcy Code, 11 U. S. C. § 523(a)(2)(A), as a debt resulting from fraud.[1]

The Bankruptcy Court found that Mans's letters constituted false representations on which petitioners had relied

[1] Although we observe the distinction between Mans and his corporations, the record before us does not indicate that the parties thought anything should turn on treating them separately. As the case comes to us, Mans is presented as the originator of both debt and misrepresentation.

to their detriment in extending credit.[2] The court followed Circuit precedent, however, see *In re Burgess*, 955 F. 2d 134 (CA1 1992), in requiring the Fields to make a further showing of reasonable reliance, defined as "what would be reasonable for a prudent man to do under those circumstances." App. 43–44. The court held that a reasonable person would have checked for any conveyance after the exchange of letters, and that the Fields had unreasonably ignored further reason to investigate in 1988, when Mr. Field's boss told him of a third party claiming to be the owner of the property.[3] Having found the Fields unreasonable in relying without further enquiry on Mans's implicit misrepresentation about the state of the title, the court held Mans's debt dischargeable.

The District Court affirmed, likewise following Circuit precedent in holding that § 523(a)(2)(A) requires reasonable reliance to exempt a debt from discharge, and finding the Bankruptcy Court's judgment supported by adequate indication in the record that the Fields had relied without sufficient reason. The Court of Appeals for the First Circuit affirmed judgment for the Bankruptcy Court's reasons. Judgt. order reported at 36 F. 3d 1089 (1994).

We granted certiorari, 514 U. S. 1095 (1995), to resolve a conflict among the Circuits over the level of reliance that § 523(a)(2)(A) requires a creditor to demonstrate.[4]

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[2] Here, Mans argues that neither he nor his corporation obtained any extension of credit at the time of the alleged fraud or thereafter. Since this issue was never raised previously and is not fairly subsumed within the question on which we granted certiorari, we do not reach it.

[3] Mr. Field testified in the Bankruptcy Court proceeding that he asked Mans in 1988 about the report of a conveyance and that Mans indicated he had not conveyed the property, App. 14–15, but Mr. Field later testified that he had not confronted Mans on the issue, *id.*, at 26–27. The Bankruptcy Court made no finding about any such conversation.

[4] Compare *In re Ophaug*, 827 F. 2d 340 (CA8 1987); *In re Mayer*, 51 F. 3d 670 (CA7 1995); *In re Allison*, 960 F. 2d 481 (CA5 1992), with *In re Burgess*, 955 F. 2d 134 (CA1 1992); *In re Mullet*, 817 F. 2d 677 (CA10 1987).

II

The provisions for discharge of a bankrupt's debts, 11 U. S. C. §§ 727, 1141, 1228, and 1328(b), are subject to exception under 11 U. S. C. § 523(a), which carries 16 subsections setting out categories of nondischargeable debts. Two of these are debts traceable to falsity or fraud or to a materially false financial statement, as set out in § 523(a)(2):

> "(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> . . . . .
>
> "(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—
>
> "(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition; [or]
>
> "(B) use of a statement in writing—
>
> "(i) that is materially false;
>
> "(ii) respecting the debtor's or an insider's financial condition;
>
> "(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
>
> "(iv) that the debtor caused to be made or published with intent to deceive."

These provisions were not innovations in their most recent codification, the Bankruptcy Reform Act of 1978 (Act), Pub. L. 95–598, 92 Stat. 2590, but had obvious antecedents in the Bankruptcy Act of 1898 (1898 Act), as amended, 30 Stat. 544. The precursor to § 523(a)(2)(A) was created when § 17(a)(2) of the 1898 Act was modified by an amendment in 1903, which provided that debts that were "liabilities for obtaining property by false pretenses or false representations" would not be affected by any discharge granted to a bankrupt, who

would still be required to pay them. Act of Feb. 5, 1903, ch. 487, 32 Stat. 798. This language inserted in § 17(a)(2) was changed only slightly between 1903 and 1978,[5] at which time the section was recodified as § 523(a)(2)(A) and amended to read as quoted above. Thus, since 1903 the statutory language at issue here merely progressed from "false pretenses or false representations" to "false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

Section 523(a)(2)(B), however, is the product of more active evolution. The germ of its presently relevant language was also inserted into the 1898 Act by a 1903 amendment, which barred any discharge by a bankrupt who obtained property by use of a materially false statement in writing made for the purpose of obtaining the credit. Act of Feb. 5, 1903, ch. 487, 32 Stat. 797–798. The provision did not explicitly require an intent to deceive or set any level of reliance, but Congress modified its language in 1960 by adding the requirements that the debtor intend to deceive the creditor and that the creditor rely on the false statement, and by limiting its application to false financial statements. Act of July 12, 1960, Pub. L. 86–621, 74 Stat. 409.[6] In 1978, Con-

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[5] The one intervening change to the quoted language was that "obtaining property" became "obtaining money or property." Act of June 22, 1938, 52 Stat. 851.

[6] The 1960 amendments also transferred the language on false financial statements by individuals from § 14 (where it barred any discharge) to § 17(a)(2) (where it barred discharge of only the specific debt incurred as a result of the false financial statement). Thus, as of 1960 the relevant portion of § 17(a)(2) provided that discharge would not release a bankrupt from debts that

"are liabilities for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting [the bankrupt's] financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive." Act of July 12, 1960, Pub. L. 86–621, 74 Stat. 409.

gress rewrote the provision as set out above and recodified it as § 523(a)(2)(B). Though the forms of the 1960 and 1978 provisions are quite different, the only distinction relevant here is that the 1978 version added a new element of reasonable reliance.

The sum of all this history is two close statutory companions barring discharge. One applies expressly when the debt follows a transfer of value or extension of credit induced by falsity or fraud (not going to financial condition), the other when the debt follows a transfer or extension induced by a materially false and intentionally deceptive written statement of financial condition upon which the creditor reasonably relied.

III

The question here is what, if any, level of justification a creditor needs to show above mere reliance in fact in order to exempt the debt from discharge under § 523(a)(2)(A). The text that we have just reviewed does not say in so many words. While § 523(a)(2)(A) speaks of debt for value "obtained by . . . false pretenses, a false representation, or actual fraud," it does not define those terms or so much as mention the creditor's reliance as such, let alone the level of reliance required. No one, of course, doubts that some degree of reliance is required to satisfy the element of causation inherent in the phrase "obtained by," but the Government, as *amicus curiae* (like petitioners in a portion of their brief), submits that the minimum level will do. It argues that when § 523(a)(2)(A) is understood in its statutory context, it requires mere reliance in fact, not reliance that is reasonable under the circumstances. Both petitioners and the Government note that § 523(a)(2)(B) expressly requires reasonable reliance, while § 523(a)(2)(A) does not. They emphasize that the precursors to §§ 523(a)(2)(A) and (B) lacked any reasonableness requirement, and that Congress added an element of reasonable reliance to § 523(a)(2)(B) in 1978, but not to § 523(a)(2)(A). They contend that the addition to § 523(a)

(2)(B) alone supports an inference that, in § 523(a)(2)(A), Congress did not intend to require reasonable reliance, over and above actual reliance. But this argument is unsound.

The argument relies on the apparent negative pregnant, under the rule of construction that an express statutory requirement here, contrasted with statutory silence there, shows an intent to confine the requirement to the specified instance. See *Gozlon-Peretz* v. *United States*, 498 U. S. 395, 404 (1991) ("'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'") (quoting *Russello* v. *United States*, 464 U. S. 16, 23 (1983)). Thus the failure of § 523(a)(2)(A) to require the reasonableness of reliance demanded by § 523(a)(2)(B) shows that (A) lacks such a requirement. Without more, the inference might be a helpful one. But there is more here, showing why the negative pregnant argument should not be elevated to the level of interpretive trump card.

First, assuming the argument to be sound, the most it would prove is that the reasonableness standard was not intended. But our job does not end with rejecting reasonableness as the standard. We have to discover the correct standard, and where there are multiple contenders remaining (as there are here), the inference from the negative pregnant does not finish the job.

There is, however, a more fundamental objection to depending on a negative pregnant argument here, for in the present circumstances there is reason to reject its soundness even as far as it goes. Quite simply, if it proves anything here, it proves too much. If the negative pregnant is the reason that § 523(a)(2)(A) has no reasonableness requirement, then the same reasoning will strip paragraph (A) of any requirement to establish a causal connection between the misrepresentation and the transfer of value or extension of credit, and it will eliminate scienter from the very notion

of fraud. Section 523(a)(2)(B) expressly requires not only reasonable reliance but also reliance itself; and not only a representation but also one that is material; and not only one that is material but also one that is meant to deceive. Section 523(a)(2)(A) speaks in the language neither of reliance nor of materiality nor of intentionality. If the contrast is enough to preclude a reasonableness requirement, it will do as well to show that the debtor need not have misrepresented intentionally, the statement need not have been material, and the creditor need not have relied. But common sense would balk.[7] If Congress really had wished to bar discharge to a debtor who made unintentional and wholly immaterial misrepresentations having no effect on a creditor's decision, it could have provided that. It would, however, take a very clear provision to convince anyone of anything so odd, and nothing so odd has ever been apparent to the courts that have previously construed this statute, routinely requiring intent, reliance, and materiality before applying § 523(a)(2)(A). See, *e. g.*, *In re Phillips*, 804 F. 2d 930 (CA6 1986); *In re Martin*, 963 F. 2d 809 (CA5 1992); *In re Menna*, 16 F. 3d 7 (CA1 1994).

The attempt to draw an inference from the inclusion of reasonable reliance in § 523(a)(2)(B), moreover, ignores the significance of a historically persistent textual difference be-

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[7] The fact that § 523(a)(2) uses the term "obtained by" does not avoid this problem, for two reasons. First, "obtained by" applies to both §§ 523(a)(2)(A) and (B); if it supplies the elements of materiality, intent to deceive, and actual reliance it renders § 523(a)(2)(B)'s inclusion of materiality and intent to deceive redundant. More to the point, it renders Congress's addition of the requirements of actual reliance and intent to deceive to the precursor of § 523(a)(2)(B) (§ 17(a)(2) of the 1898 Act) in 1960 nonsensical, since that provision also had the "obtained by" language. Second, it seems impossible to construe "obtained by" as encompassing a requirement of intent to deceive; one can obtain credit by a misrepresentation even if one has no intention of doing so (for example, by unintentionally writing that one has an annual income of $100,000, rather than $10,000, in applying for a loan).

tween the substantive terms in §§ 523(a)(2)(A) and (B): the former refer to common-law torts, and the latter do not. The principal phrase in the predecessor of § 523(a)(2)(B) was "obtained property . . . upon a materially false statement in writing," Act of Feb. 5, 1903, ch. 487, 32 Stat. 797; in the current § 523(a)(2)(B) it is value "obtained by . . . use of a statement in writing." Neither phrase is apparently traceable to another context where it might have been construed to include elements that need not be set out separately. If other elements are to be added to "statement in writing," the statutory language must add them (and of course it would need to add them to keep this exception to dischargeability from swallowing most of the rule). The operative terms in § 523(a)(2)(A), on the other hand, "false pretenses, a false representation, or actual fraud," carry the acquired meaning of terms of art. They are common-law terms, and, as we will shortly see in the case of "actual fraud," which concerns us here, they imply elements that the common law has defined them to include. See *Durland* v. *United States*, 161 U. S. 306, 312 (1896); *James-Dickinson Farm Mortgage Co.* v. *Harry*, 273 U. S. 119, 121 (1927). Congress could have enumerated their elements, but Congress's contrary drafting choice did not deprive them of a significance richer than the bare statement of their terms.

IV

"It is . . . well established that '[w]here Congress uses terms that have accumulated settled meaning under . . . the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms.'" *Community for Creative Non-Violence* v. *Reid*, 490 U. S. 730, 739 (1989) (quoting *NLRB* v. *Amax Coal Co.*, 453 U. S. 322, 329 (1981)); see also *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U. S. 318, 322 (1992). In this case, neither the structure of § 523(a)(2) nor any explicit statement in § 523(a)(2)(A) reveals, let alone dictates, the

particular level of reliance required by § 523(a)(2)(A), and there is no reason to doubt Congress's intent to adopt a common-law understanding of the terms it used.

Since the District Court treated Mans's conduct as amounting to fraud, we will look to the concept of "actual fraud" as it was understood in 1978 when that language was added to § 523(a)(2)(A).[8] Then, as now, the most widely accepted distillation of the common law of torts[9] was the Restatement (Second) of Torts (1976), published shortly before Congress passed the Act. The section on point dealing with fraudulent misrepresentation states that both actual and "justifiable" reliance are required. *Id.*, § 537. The Restatement expounds upon justifiable reliance by explaining that a person is justified in relying on a representation of fact "although he might have ascertained the falsity of the representation had he made an investigation." *Id.*, § 540. Significantly for our purposes, the illustration is given of a seller of land who says it is free of encumbrances; according to the Restatement, a buyer's reliance on this factual representation is justifiable, even if he could have "walk[ed] across the street to the office of the register of deeds in the courthouse" and easily have learned of an unsatisfied mortgage. *Id.*, § 540, Illustration 1. The point is otherwise made in a later section noting that contributory negligence is no bar to recovery because fraudulent misrepresentation is an intentional tort. Here a contrast between a justifiable and reasonable reliance is clear: "Although the plaintiff's reliance on the misrepresentation must be justifiable . . . this does not

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[8] Although we do not mean to suggest that the requisite level of reliance would differ if there should be a case of false pretense or representation but not of fraud, there is no need to settle that here.

[9] We construe the terms in § 523(a)(2)(A) to incorporate the general common law of torts, the dominant consensus of common-law jurisdictions, rather than the law of any particular State. See *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U. S. 318, 323, n. 3 (1992); *Community for Creative Non-Violence* v. *Reid*, 490 U. S. 730, 740 (1989).

mean that his conduct must conform to the standard of the reasonable man. Justification is a matter of the qualities and characteristics of the particular plaintiff, and the circumstances of the particular case, rather than of the application of a community standard of conduct to all cases." *Id.*, § 545A, Comment *b*. Justifiability is not without some limits, however. As a comment to § 541 explains, a person is

> "required to use his senses, and cannot recover if he blindly relies upon a misrepresentation the falsity of which would be patent to him if he had utilized his opportunity to make a cursory examination or investigation. Thus, if one induces another to buy a horse by representing it to be sound, the purchaser cannot recover even though the horse has but one eye, if the horse is shown to the purchaser before he buys it and the slightest inspection would have disclosed the defect. On the other hand, the rule stated in this Section applies only when the recipient of the misrepresentation is capable of appreciating its falsity at the time by the use of his senses. Thus a defect that any experienced horseman would at once recognize at first glance may not be patent to a person who has had no experience with horses." *Id.*, § 541, Comment *a*.

A missing eye in a "sound" horse is one thing; long teeth in a "young" one, perhaps, another.

Similarly, the edition of Prosser's Law of Torts available in 1978 (as well as its current successor) states that justifiable reliance is the standard applicable to a victim's conduct in cases of alleged misrepresentation and that "[i]t is only where, under the circumstances, the facts should be apparent to one of his knowledge and intelligence from a cursory glance, or he has discovered something which should serve as a warning that he is being deceived, that he is required to make an investigation of his own." W. Prosser, Law of

Torts § 108, p. 718 (4th ed. 1971) (footnotes omitted); accord, W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 108, p. 752 (5th ed. 1984) (Prosser & Keeton). Prosser represents common-law authority as rejecting the reasonable person standard here, stating that "the matter seems to turn upon an individual standard of the plaintiff's own capacity and the knowledge which he has, or which may fairly be charged against him from the facts within his observation in the light of his individual case." Prosser, *supra*, § 108, at 717; accord, Prosser & Keeton § 108, at 751; see also 1 F. Harper & F. James, Law of Torts § 7.12, pp. 581–583 (1956) (rejecting reasonableness standard in misrepresentation cases in favor of justifiability and stating that "by the distinct tendency of modern cases, the plaintiff is entitled to rely upon representations of fact of such a character as to require some kind of investigation or examination on his part to discover their falsity, and a defendant who has been guilty of conscious misrepresentation can not offer as a defense the plaintiff's failure to make the investigation or examination to verify the same") (footnote omitted); accord, 2 F. Harper, F. James, & O. Gray, Law of Torts § 7.12, pp. 455–458 (2d ed. 1986).

These authoritative syntheses surely spoke (and speak today) for the prevailing view of the American common-law courts. Of the 46 States that, as of November 6, 1978 (the day the Act became law), had articulated the required level of reliance in a common-law fraud action, 5 required reasonable reliance,[10] 5 required mere re-

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[10] See *Polansky* v. *Orlove*, 252 Md. 619, 624–625, 251 A. 2d 201, 204 (1969) (stating that purchaser must show reasonable reliance); *Cudemo* v. *Al and Lou Construction Co.*, 54 App. Div. 2d 995, 996, 387 N. Y. S. 2d 929, 930 (1976) (referring to justifiable reliance but imposing duty to investigate); *Works* v. *Wyche*, 344 S. W. 2d 193, 198 (Tex. Civ. App. 1961) (requiring reasonable reliance); *Jardine* v. *Brunswick Corp.*, 18 Utah 2d 378, 382, 423 P. 2d 659, 662 (1967) (requiring reasonable reliance); *Horner* v. *Ahern*, 207 Va. 860, 863–864, 153 S. E. 2d 216, 219 (1967) (stating that, if purchaser

liance in fact,[11] and 36 required an intermediate level of reliance, most frequently referred to as justifiable reliance.[12] Following our established practice of finding Con-

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is given information that would excite suspicions of reasonably prudent man, he has a duty to investigate).

[11] See *Beavers* v. *Lamplighters Realty, Inc.*, 556 P. 2d 1328, 1331 (Okla. App. 1976) (requiring actual reliance only); *Campanelli* v. *Vescera*, 75 R. I. 71, 74–75, 63 A. 2d 722, 724 (1949) (stating that actual reliance is sufficient, notwithstanding relying party's failure to investigate or verify); *Negyessy* v. *Strong*, 136 Vt. 193, 194–195, 388 A. 2d 383, 385 (1978) (stating that actual reliance is sufficient, even if plaintiff might have discovered the wrong but for his own neglect); *Horton* v. *Tyree*, 104 W. Va. 238, 242, 139 S. E. 737, 738 (1927) (holding that one to whom a representation is made has the right to rely without any further inquiry); *Johnson* v. *Soulis*, 542 P. 2d 867, 872 (Wyo. 1975) (requiring actual reliance only).

[12] See *Franklin* v. *Nunnelley*, 242 Ala. 87, 89, 5 So. 2d 99, 101 (1941) (stating that there is no duty to investigate in absence of anything that would arouse suspicion); *Thomson* v. *Wheeler Construction Co.*, 385 P. 2d 111, 113 (Alaska 1963) (stating that justifiable reliance is the appropriate standard); *Barnes* v. *Lopez*, 25 Ariz. App. 477, 480, 544 P. 2d 694, 697 (1976) (holding that purchaser had no duty to investigate); *Fausett & Co.* v. *Bullard*, 217 Ark. 176, 179–180, 229 S. W. 2d 490, 491–492 (1950) (relying on Restatement of Torts § 540 (1938) (hereinafter Restatement (First)), which applies the same rule as in Restatement (Second) of Torts § 540 (1976)); *Seeger* v. *Odell*, 18 Cal. 2d 409, 414–415, 115 P. 2d 977, 980–981 (1941) (relying on Restatement (First) and W. Prosser, Law of Torts (1941)); *Monte Verde* v. *Moore*, 539 P. 2d 1362, 1365 (Colo. App. 1975) (requiring justifiable reliance and distinguishing it from reasonable reliance); *Ford* v. *H. W. Dubiskie & Co.*, 105 Conn. 572, 577–578, 136 A. 560, 562–563 (1927) (stating that no investigation is necessary for reliance to be justified); *Eastern States Petroleum Co.* v. *Universal Oil Products Co.*, 24 Del. Ch. 11, 28–29, 3 A. 2d 768, 776–777 (1939) (holding that buyer had right to rely without investigating); *Board of Public Instruction* v. *Everett W. Martin & Son, Inc.*, 97 So. 2d 21, 26–27 (Fla. 1957) (holding that purchaser had no duty to investigate where seller made clear factual representation); *City Dodge, Inc.* v. *Gardner*, 232 Ga. 766, 770, 208 S. E. 2d 794, 797 (1974) (requiring justifiable reliance); *Sorenson* v. *Adams*, 98 Idaho 708, 715, 571 P. 2d 769, 776 (1977) (stating that neither purchasers' lack of caution in believing a factual misrepresentation nor their failure to make an independent investigation is a defense to their fraud action); *Roda* v. *Berko*, 401 Ill. 335, 342, 81 N. E. 2d 912, 916 (1948) ("[I]f it appears that one party

gress's meaning in the generally shared common law when common-law terms are used without further specification, we hold that § 523(a)(2)(A) requires justifiable, but not reason-

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has been guilty of an intentional and deliberate fraud, the doctrine is well settled that he cannot defend against such fraud by saying that the same might have been discovered had the party whom he deceived exercised reasonable diligence and care"); *Gonderman* v. *State Exchange Bank*, 166 Ind. App. 181, 190, 334 N. E. 2d 724, 729 (1975) (stating that level of required prudence depends on whether the recipient of a representation is unwary); *Sutton* v. *Greiner*, 177 Iowa 532, 540–541, 159 N. W. 268, 271–272 (1916) (same as Illinois); *Prather* v. *Colorado Oil & Gas Corp.*, 218 Kan. 111, 119, 542 P. 2d 297, 304 (1975) (finding no duty to investigate); *Sanford Construction Co.* v. *S. & H. Contractors, Inc.*, 443 S. W. 2d 227, 233–234 (Ky. App. 1969) (indicating that level of reliance depends on sophistication of parties); *Horner* v. *Flynn*, 334 A. 2d 194, 205 (Me. 1975) (stating that a person who commits intentional misrepresentation cannot excuse himself based on the foolishness of the hearer in believing the representation); *Yorke* v. *Taylor*, 332 Mass. 368, 372–374, 124 N. E. 2d 912, 915–916 (1955) (relying on Restatement (First)); *Boss* v. *Tomaras*, 241 Mich. 540, 542, 217 N. W. 783 (1928) (finding right to rely without investigation); *Murphy* v. *Country House, Inc.*, 307 Minn. 344, 351, 240 N. W. 2d 507, 512 (1976) (rejecting reasonable person standard and applying subjective test based on intelligence and experience of aggrieved person); *First Mobile Home Corp.* v. *Little*, 298 So. 2d 676, 679 (Miss. 1974) (requiring justifiable reliance); *Tietjens* v. *General Motors Corp.*, 418 S. W. 2d 75, 81–83 (Mo. 1967) (stating that reliance required depends on the positions of the parties, and that there is no duty to investigate); *Bails* v. *Gar*, 171 Mont. 342, 348–349, 558 P. 2d 458, 462–463 (1976) (stating that requirement depends on experience and resourcefulness of relying party); *Growney* v. *C M H Real Estate Co.*, 195 Neb. 398, 400–401, 238 N. W. 2d 240, 242 (1976) (requiring justifiable reliance); *Sanguinetti* v. *Strecker*, 94 Nev. 200, 206, 577 P. 2d 404, 408 (1978) (requiring justifiable reliance); *Smith* v. *Pope*, 103 N. H. 555, 559–560, 176 A. 2d 321, 324–325 (1961) (relying on Restatement (First)); *National Premium Budget Plan Corp.* v. *National Fire Insurance Co. of Hartford*, 97 N. J. Super. 149, 209–211, 234 A. 2d 683, 716–718 (1967) (relying on Restatement (First) and W. Prosser, Law of Torts (2d ed. 1955), including example of one-eyed horse, in finding that justifiable reliance is appropriate standard), aff'd, 106 N. J. Super. 238, 254 A. 2d 819 (1969); *Jones* v. *Friedman*, 57 N. M. 361, 367–368, 258 P. 2d 1131, 1134–1135 (1953) (requiring justifiable reliance and no general duty to investigate); *Johnson*

able, reliance. See *In re Vann*, 67 F. 3d 277 (CA11 1995); *In re Kirsh*, 973 F. 2d 1454 (CA9 1992).

It should go without saying that our analysis does not relegate all reasoning from a negative pregnant to the rubbish heap, or render the reasonableness of reliance wholly irrelevant under § 523(a)(2)(A). As for the rule of construction, of course it is not illegitimate, but merely limited. The more apparently deliberate the contrast, the stronger the inference, as applied, for example, to contrasting statutory sections originally enacted simultaneously in relevant respects, see *Gozlon-Peretz* v. *United States*, 498 U. S., at 404 (noting that a single enactment created provisions with language that differed). Even then, of course, it may go no further than ruling out one of several possible readings as the wrong one. The rule is weakest when it suggests results strangely at odds with other textual pointers, like the common-law lan-

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v. *Owens*, 263 N. C. 754, 758–759, 140 S. E. 2d 311, 314 (1965) (referring to reasonable reliance, but applying standard as preventing seller from saying that buyer ought not to have been so gullible as to trust him, unless the circumstances are such that buyer appears to have known the truth); *Steiner* v. *Roberts*, 72 Ohio L. Abs. 391, 396, 131 N. E. 2d 238, 242 (App. 1955) (applying standard from Restatement (First)); *Furtado* v. *Gemmell*, 242 Ore. 177, 182, 408 P. 2d 733, 735 (1965) (holding that a representee has some duty, although less than a duty to exercise reasonable care, to protect his interest); *Emery* v. *Third National Bank of Pittsburgh*, 314 Pa. 544, 547–548, 171 A. 881, 882 (1934) (stating that a representee must be "'justified in relying'" on the misrepresentation); *Parks* v. *Morris Homes Corp.*, 245 S. C. 461, 466–467, 141 S. E. 2d 129, 132 (1965) (referring to reasonable prudence and diligence, but defining it as depending on intelligence, age, experience, mental and physical condition of the parties, their respective knowledge, and their means of knowledge); *Scherf* v. *Myers*, 258 N. W. 2d 831, 835 (S. D. 1977) (stating that justifiable reliance applies in analogous situation of indemnity based on fraud); *Chiles* v. *Kail*, 34 Wash. 2d 600, 606, 208 P. 2d 1198, 1201–1202 (1949) (stating that test is not what a reasonable and prudent man would have done but whether plaintiff, in the condition he was in, had a right to rely); *First National Bank in Oshkosh* v. *Scieszinski*, 25 Wis. 2d 569, 575–576, 131 N. W. 2d 308, 312 (1964) (requiring justifiable reliance with no general duty to investigate).

guage at work in the statute here. See *Alaska Airlines, Inc.* v. *Brock*, 480 U. S. 678, 690–691 (1987).

As for the reasonableness of reliance, our reading of the Act does not leave reasonableness irrelevant, for the greater the distance between the reliance claimed and the limits of the reasonable, the greater the doubt about reliance in fact. Naifs may recover, at common law and in bankruptcy, but lots of creditors are not at all naive. The subjectiveness of justifiability cuts both ways, and reasonableness goes to the probability of actual reliance.

V

There remains a fair question that ought to be faced. It makes sense to protect a creditor even if he was not quite reasonable in relying on a fraudulent representation; fraudulence weakens the debtor's claim to consideration. And yet, why should the rule be different when fraud is carried to the point of a written financial statement? Does it not count against our reading of the statute that a debtor who makes a misrepresentation with the formality of a written financial statement may have less to bear than the debtor who commits his fraud by a statement, perhaps oral, about something other than his bank balance? One could answer that the question does have its force, but counter it by returning to the statutory history and asking why Congress failed to place a requirement of reasonable reliance in § 523(a)(2)(A) if it meant all debtors to be in the same boat. But there may be a better answer, tied to the peculiar potential of financial statements to be misused not just by debtors, but by creditors who know their bankruptcy law. The House Report on the Act suggests that Congress wanted to moderate the burden on individuals who submitted false financial statements, not because lies about financial condition are less blameworthy than others, but because the relative equities might be affected by practices of consumer finance companies, which sometimes have encouraged such falsity by their borrowers

for the very purpose of insulating their own claims from discharge.[13] The answer softens the ostensible anomaly.

VI

In this case, the Bankruptcy Court applied a reasonable person test entailing a duty to investigate. The court stated that

> "the case law establishes an objective test, and that is what would be reasonable for a prudent man to do under those circumstances. At a minimum, a prudent man, I think, would have asked his attorney, could he transfer it without my consent? And the answer would have to be yes, and then the next question would be, well, let's see if he's done it? And those questions simply were not asked, and I don't think on balance that was reasonable reliance." App. 43–44.

Because the Bankruptcy Court's requirement of reasonableness clearly exceeds the demand of justifiable reliance that we hold to apply under § 523(a)(2)(A), we vacate the judgment and remand the case for proceedings consistent with this opinion.[14]

It is so ordered.

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[13] "It is a frequent practice for consumer finance companies to take a list from each loan applicant of other loans or debts that the applicant has outstanding. While the consumer finance companies use these statements in evaluating the credit risk, very often the statements are used as a basis for a false financial statement exception to discharge. The forms that the applicant fills out often have too little space for a complete list of debts. Frequently, a loan applicant is instructed by a loan officer to list only a few or only the most important of his debts. Then, at the bottom of the form, the phrase 'I have no other debts' is either printed on the form, or the applicant is instructed to write the phrase in his own handwriting." H. R. Rep. No. 95–595, pp. 130–131 (1977) (footnote omitted).

[14] JUSTICE BREYER would not remand, for essentially two reasons: in substance the Bankruptcy Court applied the right standard, looking to the individual capacity of Mr. Field in testing whether the Fields relied at all; and the Fields do not deserve a remand, having failed to get their own

JUSTICE GINSBURG, concurring.

I concur in the Court's opinion and write separately to highlight a causation issue still open for determination on remand: Was the debt in question, as the statute expressly requires, "obtained by" the alleged fraud? See 11 U. S. C. § 523(a)(2)(A); *ante*, at 63, n. 3. Mans ultimately urges that the promissory note to the Fields is, in any event, a dischargeable debt because it was not "obtained by" the allegedly fraudulent letters Mans's attorney wrote to the Fields' attorney months *after* the debt was incurred. The Fields maintain that they relied on the letters to their detriment, in effect according Mans an extension of credit instead of invoking the due-on-sale clause.

Mans prevailed on the reliance issue before the bankruptcy, district, and appellate courts on the basis of then-governing Circuit precedent. See *In re Burgess*, 955 F. 2d 134, 140 (CA1 1992) (creditor required to prove that its reliance was reasonable). With the Circuit law on reliance solidly in his favor, Mans understandably did not advance in the lower courts the argument that the debt was not "obtained by" fraud. When the "reliance must be reasonable" rule solid in the Circuit was challenged in this Court, however, Mans raised the causation point as an alternate justification for the judgment in his favor. See Brief for Respondent 32–33 (argument heading V. reads: "Since the credit here was not 'obtained by' the alleged fraud, petitioners have failed to meet the [causation] requirement of 523(a)(2)(A)"); Tr. of Oral Arg. 43 ("[U]nder the clear language of the statute, there

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terminology right below and having no real prospect of anything but needless expense even if there is a remand. The first reason takes a bit of kind reading, since the Bankruptcy Judge spoke in terms of an objective standard and expressly found that the Fields had in fact relied, however imprudently. The second may indicate that we would have been justified in denying certiorari, but after taking the case and declaring the correct standard in response to the Fields' argument in this Court, we think they are entitled to decide how Pyrrhic a victory to declare.

has to be an extension of credit in connection with the fraud. It has to be obtained by the fraud . . . .").*

At oral argument, the following exchange between the Court and the Fields' attorney occurred:

> "QUESTION: . . . Suppose the debtor here had simply transferred th[e] property without saying one word to the creditor. . . . [W]ould [the debt] then be dischargeable? There would be no representation at all, just in violation of the agreement the debtor sells the property . . . . Dischargeable, right?
>
> "MR. SEUFERT: While [those are] not the facts of this case, I would agree with you, it would be dischargeable." *Id.*, at 8–9.

It bears consideration whether a debt that would have been dischargeable had the debtor simply transferred the property, in violation of the due-on-sale clause with never a word to the creditor, nonetheless should survive bankruptcy because the debtor wrote to the creditor of the prospect, albeit not the actuality, of the transfer. Because this Court is not positioned to provide a first view on questions of this order, I express no opinion on the appropriate resolution of the unsettled causation ("obtained by") issue.

JUSTICE BREYER, with whom JUSTICE SCALIA joins, dissenting.

I agree with the Court's holding that "actual fraud" under 11 U. S. C. § 523(a)(2)(A) incorporates the common-law elements of intentional misrepresentation. I also agree that to recover under a common-law fraud theory, plaintiffs must do more than show that they *actually* relied upon the defendant's misrepresentation—they must show that the reliance was "justifiable" in the circumstances, but they need not go so far as to show that a "reasonably prudent" person would

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*Mans appeared *pro se* in the lower courts; he was represented by counsel in this Court.

have relied upon it similarly. See W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 108, pp. 749–753 (5th ed. 1984) (hereinafter Prosser & Keeton). And, I agree that the Bankruptcy Court used the wrong words when it described the "reliance" standard as "an objective test" that asks "what would be reasonable for a prudent man to do under [the] circumstances." App. 43–44. I disagree, however, with the Court's result in this case.

First, the Bankruptcy Court, while using the wrong words, did the right thing. That court essentially found that in mid-1987, Mr. Field and his wife sold their inn for about $500,000 to Mr. Mans, a developer. To secure the $187,000 that Mans still owed them, the Fields kept a mortgage, which had a term that accelerated the debt should Mans transfer the property to anyone else without their permission. A few months later, Mans wrote to the Fields saying that he wanted to transfer the inn to a development partnership which Mans had formed with a new partner, Mr. De Felice. Mans observed that because the Fields had transferred the inn to a corporation, the stock of which was wholly owned by Mans, Mans could effectively accomplish the transfer to the new partnership by simply conveying the stock of the holding company to the partnership, thereby avoiding the "debt acceleration" clause. But, Mans said, he would prefer to transfer the inn outright, and therefore was seeking their permission to do so without accelerating the debt. The Fields did not give permission. Mans transferred the inn anyway. Nothing more was heard of the matter until 1991, when real estate values fell, Mans went bankrupt, and the Fields brought this lawsuit in an effort to prevent the $150,000 they were then owed from disappearing in the bankruptcy.

The Bankruptcy Judge found that Mans' mid-1987 letters implied that he had not *yet* transferred the inn to the partnership as of the time he wrote the letters. But this impli-

cation was false, for Mans had transferred the inn at least a few days earlier. Still, the Bankruptcy Court asked whether that false implication had made any difference, *i. e.*, whether the Fields, during the next few years, had relied upon this false implication in not accelerating the debt (and obtaining their money before Mans' bankruptcy). The judge very much doubted any *actual* reliance. But, in any event, Mr. Field had visited the property fairly regularly to check on the progress of the development, he had seen Mans there fairly often, and he had been told that De Felice had been on the premises, claiming to be "the new owner." And, that being so, the judge held that at some point over the course of the next 3½ years—during which time Mr. Field was "accepting mortgage payments and looking at drawings and discussing the project with Mans"—Mr. Field *should simply have asked* Mans, "What's the deal here? Who owns this thing?" *Id.*, at 42–43. (Or, the Fields could "have simply checked the title in the . . . County Registry of Deeds which Mr. Field has demonstrated he knows very well is up in North Haverhill." *Id.*, at 42.)

To hold this *is*, in my view, to apply the commentators' "justifiable reliance" standard. The court focused upon the individual circumstances and capacity of the plaintiff, Mr. Field. See Prosser & Keeton § 108, at 751. The court found that Mr. Field should have looked into the matter, not because of any general "duty to investigate," but because, in the particular circumstances, he "discovered something which should serve as a warning that he [was] being deceived." *Id.*, § 108, at 752. That is, the court did not use the "objective" test as an improper search for "contributory negligence"—*i. e.*, to deny recovery to one also at fault for failing to exercise "the care of a reasonably prudent person for his own protection." *Id.*, § 108, at 750. Rather, the court viewed the failure to investigate, in light of the clear warnings of deception, as a means of testing whether there was "some objective corroboration to plaintiff's claim that

he did rely," a primary purpose of the "justifiable reliance" requirement. See *id.*, § 108, at 750–751.

Second, the Bankruptcy Court's use of what turned out to be the wrong words ("reasonable" and "prudent man" rather than "justifiable") is not grounds for reversal, for no one brought the "correct" terminology to the lower courts' attention. The Fields did not argue in the Bankruptcy Court, or in their briefs to the District Court or the Court of Appeals, or in their petition for certiorari, that there was any difference between "reasonable reliance" and "justifiable reliance." To the contrary, the Fields took the view (which the Court now unanimously rejects) that *actual* reliance alone—whether or not it meets *any* objective standard—is sufficient for recovery. Indeed, it appears that the Fields did not even mention the word "justifiable" below, but, rather, used the term "reasonable" throughout to refer to any kind of objective standard. The first time the word "justifiable" appears in this case seems to be in the Fields' brief on the merits in this Court where they point to the Restatement's use of the term "justifiable," Restatement (Second) of Torts § 540 (1976), and argue that "[j]ustifiable reliance does *not* require that the recipient of misrepresentation investigate the underlying assertion." Brief for Petitioners 20 (emphasis in original). But see Prosser & Keeton § 108, at 752.

Third, the "correct" terminology would not have appeared obvious to a judge, certainly not to a judge who was not a special expert in the common law of misrepresentation. Prior case law was not neat in its use of the terminology. The commentaries do not refer to the old prudent person standard as a "reasonable reliance" standard, but, instead, distinguish between the "justifiable reliance" standard as it has been understood in cases now disapproved, and the "justifiable reliance" standard as it is applied in most modern cases. See *id.*, § 108; 2 F. Harper, F. James, & O. Gray, Law of Torts § 7.12, pp. 455–464 (2d ed. 1986). Indeed, the majority's footnotes distinguish between cases in which a court (1)

used a "prudent person" standard or imposed a general duty to investigate, and (2) used a plaintiff-specific standard while disavowing a general duty to investigate. *Ante*, at 72–75, nn. 10–12. But, courts in the first category did not always use the words "reasonable reliance" to describe their standard. See, *e. g.*, *Horner* v. *Ahern*, 207 Va. 860, 863–864, 153 S. E. 2d 216, 219 (1967). Indeed, sometimes they used the word "justifiable." See, *e. g.*, *Cudemo* v. *Al & Lou Construction Co.*, 54 App. Div. 2d 995, 996, 387 N. Y. S. 2d 929, 930 (1976). Nor did courts in the second category always use the words "justifiable reliance" to describe their standard. See, *e. g.*, *Barnes* v. *Lopez*, 25 Ariz. App. 477, 480, 544 P. 2d 694, 697 (1976). Indeed, sometimes they used the words "reasonable reliance." See, *e. g.*, *Johnson* v. *Owens*, 263 N. C. 754, 758–759, 140 S. E. 2d 311, 314 (1965). The relevant historical controversy in the law of fraud has focused not so much on labels as on the nature of the duty to investigate (*e. g.*, whether the duty is applicable normally or only in special, suspicious circumstances) and on the extent to which the law looks to the circumstances and capacities of a particular plaintiff. See Prosser & Keeton § 108. The Bankruptcy Court, as I have just pointed out, followed modern fraud law in both respects.

Fourth, while I understand that sometimes this Court might appropriately announce a legal standard and remand the case to the lower courts for application of the chosen standard, I do not agree that it should do so here. The record below is brief (87 pages of transcript plus exhibits). The Bankruptcy Judge's findings are reasonably clear. And, further litigation is expensive. Mr. Mans is bankrupt, representing himself until this Court appointed a lawyer for him; the Fields are not wealthy and should not be encouraged to pursue what is, in my view, the impossible dream of eventually recovering the $150,000 (minus legal fees). And, the example this Court sets by not looking more closely into the details of the case is not a happy one—particularly if it sug-

gests that appellate courts can, or should, insist that lower courts use commentator-approved technical terminology when the parties have not argued for its use and when that use seems most unlikely to have made any difference. Doing so simply generates unnecessary appeals, creating additional delay and expense in a system that could use less of both.

For these reasons, I dissent.

Syllabus

NATIONAL LABOR RELATIONS BOARD *v.* TOWN & COUNTRY ELECTRIC, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 94–947. Argued October 10, 1995—Decided November 28, 1995

In the course of holding that respondent company committed "unfair labor practices" when it refused to interview or retain 11 job applicants because of their union membership, the National Labor Relations Board determined that all of the applicants were protected "employee[s]" as that word is defined in the National Labor Relations Act, 29 U. S. C. § 152(3), even though they intended to try to organize the company if they were hired and would have been paid by the union while they set about their organizing. The Eighth Circuit reversed, holding that the statutory word "employee" does not cover (and therefore the Act does not protect from antiunion discrimination) those who work for a company while a union simultaneously pays them to organize that company.

Held: A worker may be a company's "employee," within the terms of the National Labor Relations Act, even if, at the same time, a union pays that worker to help the union organize the company. Pp. 88–98.

(a) The Board may lawfully interpret § 152(3)'s language—*i. e.*, "[t]he term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise"—to include company workers who are also paid union organizers. The Board's broad, literal reading of "employee" is entitled to considerable deference as the interpretation of the agency created by Congress to administer the Act. See, *e. g.*, *Sure-Tan, Inc.* v. *NLRB*, 467 U. S. 883, 891. Moreover, several strong general arguments favor the Board's position. First, the Board's decision is consistent with the Act's language, particularly the "any employee" phrase, which is broad enough to include, under the ordinary dictionary definitions of "employee," those company workers whom a union also pays for organizing. Second, the Board's interpretation is consistent with several of the Act's purposes—such as protecting employees' right to organize for mutual aid without employer interference and encouraging and protecting the collective-bargaining process—and with the legislative history. Third, the Board's reading is consistent with this Court's decisions. See, *e. g.*, *ibid.* Finally, § 186(c)(1) also seems specifically to contemplate the possibility that a company's employee might also work for a union. Pp. 88–92.

Syllabus

(b) Respondent company's agency law argument—that a paid union organizer is controlled by the union and therefore must be considered the servant (*i. e.*, the "employee") of the union alone—fails because the Board's interpretation of "employee" is consistent with the common law of agency, which recognizes that a person may be the servant of two masters at one time as to one act. The company's practical argument—that Congress could not have meant to include paid union organizers as "employees" under the Act in light of the potential for harm to an employer that such workers might pose—suffers from several serious problems and is thus unconvincing. Pp. 92–98.

34 F. 3d 625, vacated and remanded.

BREYER, J., delivered the opinion for a unanimous Court.

Deputy Solicitor General Wallace argued the cause for petitioner. With him on the briefs were *Solicitor General Days, Paul A. Engelmayer, Linda Sher, Norton J. Come, Peter Winkler,* and *John Emad Arbab.*

James K. Pease, Jr., argued the cause for respondents. With him on the brief for respondent Town & Country Electric, Inc., was *Douglas E. Witte. Stephen D. Gordon, Laurence Gold, Laurence J. Cohen, Marsha S. Berzon, Mary Lynne Werlwas,* and *Scott A. Kronland* filed briefs for respondent union.*

**Steven R. Shapiro* and *Alan Hyde* filed a brief for the American Civil Liberties Union as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for Associated Builders and Contractors, Inc., et al. by *Maurice Baskin, Jan S. Amundson,* and *Quentin Riegel;* for the Associated General Contractors of America by *Joe F. Canterbury, Jr., Frederic Gover,* and *Michael E. Kennedy;* for the Chamber of Commerce of the United States by *Marshall B. Babson, Stanley R. Strauss, Stephen A. Bokat, Robin S. Conrad,* and *Mona C. Zeiberg;* and for the Labor Policy Association by *Robert E. Williams* and *Daniel V. Yager.*

Michael T. Manley, G. Gordon Atcheson, John J. Blake, and *Michael J. Stapp* filed a brief for the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL–CIO, CFL, as *amicus curiae.*

JUSTICE BREYER delivered the opinion of the Court.

Can a worker be a company's "employee," within the terms of the National Labor Relations Act, 29 U. S. C. § 151 *et seq.*, if, at the same time, a union pays that worker to help the union organize the company? We agree with the National Labor Relations Board that the answer is "yes."

I

The relevant background is the following: Town & Country Electric, Inc., a nonunion electrical contractor, wanted to hire several licensed Minnesota electricians for construction work in Minnesota. Town & Country (through an employment agency) advertised for job applicants, but it refused to interview 10 of 11 union applicants (including two professional union staff) who responded to the advertisement. Its employment agency hired the one union applicant whom Town & Country interviewed, but he was dismissed after only a few days on the job.

The members of the International Brotherhood of Electrical Workers, Locals 292 and 343 (Union), filed a complaint with the National Labor Relations Board claiming that Town & Country and the employment agency had refused to interview (or retain) them because of their union membership. See National Labor Relations Act (Act) §§ 8(a)(1) and (3), 49 Stat. 452, as amended, 29 U. S. C. §§ 158(a)(1) and (3) (1988 ed.). An Administrative Law Judge ruled in favor of the Union members, and the Board affirmed that ruling. *Town & Country Elec., Inc.*, 309 N. L. R. B. 1250, 1258 (1992).

In the course of its decision, the Board determined that all 11 job applicants (including the two Union officials and the one member briefly hired) were "employees" as the Act defines that word. *Ibid.* The Board recognized that under well-established law, it made no difference that the 10 members who were simply applicants were never hired. See

Phelps Dodge Corp. v. *NLRB*, 313 U. S. 177, 185–186 (1941) (statutory word "employee" includes job applicants, for otherwise the Act's prohibition of "'discrimination in regard to hire'" would "serve no function"). Neither, in the Board's view, did it matter (with respect to the meaning of the word "employee") that the Union members intended to try to organize the company if they secured the advertised jobs, nor that the Union would pay them while they set about their organizing. The Board then rejected the company's fact-based explanations for its refusals to interview or to retain these 11 "employees" and held that the company had committed "unfair labor practices" by discriminating on the basis of union membership. *Town & Country Elec., supra*, at 1250, n. 3, 1256, 1258.

The United States Court of Appeals for the Eighth Circuit reversed the Board. It held that the Board had incorrectly interpreted the statutory word "employee." In the court's view, that key word does not cover (and therefore the Act does not protect from antiunion discrimination) those who work for a company while a union simultaneously pays them to organize that company. 34 F. 3d 625, 629 (1994). See also *H. B. Zachry Co.* v. *NLRB*, 886 F. 2d 70, 75 (CA4 1989). For this threshold reason the court refused to enforce the Board's order.

Because other Circuits have interpreted the word "employee" differently, see, *e. g.*, *Willmar Elec. Service, Inc.* v. *NLRB*, 968 F. 2d 1327, 1330–1331 (CADC 1992) (paid union organizers can be "employees" protected by the Act), cert. denied, 507 U. S. 909 (1993); *NLRB* v. *Henlopen Mfg. Co.*, 599 F. 2d 26, 30 (CA2 1979) (same), we granted certiorari. We now resolve the conflict in the Board's favor.

II

The Act seeks to improve labor relations ("eliminate the causes of certain substantial obstructions to the free flow of commerce," 29 U. S. C. §151 (1988 ed.)) in large part by granting specific sets of rights to employers and to employ-

ees. This case grows out of a controversy about rights that the Act grants to "employees," namely, rights "to self-organization, to form, join, or assist labor organizations, to bargain collectively . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." § 157. We granted certiorari to decide only that part of the controversy that focuses upon the meaning of the word "employee," a key term in the statute, since these rights belong only to those workers who qualify as "employees" as that term is defined in the Act. See, *e. g.*, § 158(a)(1) ("unfair labor practice" to "interfere with . . . *employees* in the exercise of the rights guaranteed in section 157 of this title") (emphasis added).

The relevant statutory language is the following:

> "*The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise*, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined." § 152(3) (emphasis added).

We must specifically decide whether the Board may lawfully interpret this language to include company workers who are also paid union organizers.

We put the question in terms of the Board's lawful authority because this Court's decisions recognize that the Board

often possesses a degree of legal leeway when it interprets its governing statute, particularly where Congress likely intended an understanding of labor relations to guide the Act's application. See, *e. g.*, *Sure-Tan, Inc.* v. *NLRB*, 467 U. S. 883, 891 (1984) (interpretations of the Board, the agency that Congress "'created . . . to administer the Act,'" will be upheld if "reasonably defensible") (internal citation omitted); *NLRB* v. *Curtin Matheson Scientific, Inc.*, 494 U. S. 775, 786 (1990) (Congress delegated to the Board "primary responsibility for developing and applying national labor policy"); *ABF Freight System, Inc.* v. *NLRB*, 510 U. S. 317, 324 (1994) (the Board's views are entitled to "the greatest deference"). See also *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984). We add, however, that the Board needs very little legal leeway here to convince us of the correctness of its decision.

Several strong general arguments favor the Board's position. For one thing, the Board's decision is consistent with the broad language of the Act itself—language that is broad enough to include those company workers whom a union also pays for organizing. The ordinary dictionary definition of "employee" includes any "person who works for another in return for financial or other compensation." American Heritage Dictionary 604 (3d ed. 1992). See also Black's Law Dictionary 525 (6th ed. 1990) (an employee is a "person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed"). The phrasing of the Act seems to reiterate the breadth of the ordinary dictionary definition, for it says "[t]he term 'employee' shall include *any* employee." 29 U. S. C. § 152(3) (1988 ed.) (emphasis added). Of course, the Act's definition also contains a list of exceptions, for example, for independent contractors, agricultural laborers, domestic workers, and employees sub-

ject to the Railway Labor Act, 45 U. S. C. § 151 *et seq.*; but no exception applies here.

For another thing, the Board's broad, literal interpretation of the word "employee" is consistent with several of the Act's purposes, such as protecting "the right of employees to organize for mutual aid without employer interference," *Republic Aviation Corp.* v. *NLRB*, 324 U. S. 793, 798 (1945); see also 29 U. S. C. § 157 (1988 ed.); and "encouraging and protecting the collective-bargaining process." *Sure-Tan, Inc.* v. *NLRB*, *supra*, at 892. And, insofar as one can infer purpose from congressional reports and floor statements, those sources too are consistent with the Board's broad interpretation of the word. It is fairly easy to find statements to the effect that an "employee" simply "means someone who works for another for hire," H. R. Rep. No. 245, 80th Cong., 1st Sess., 18 (1947), and includes "every man on a payroll," 79 Cong. Rec. 9686 (1935) (colloquy between Reps. Taylor and Connery). See also S. Rep. No. 573, 74th Cong., 1st Sess., 6 (1935) (referring to an employee as a "worker"); H. R. Rep. No. 969, 74th Cong., 1st Sess., 8 (1935) (same); H. R. Rep. No. 972, 74th Cong., 1st Sess., 8 (1935) (same); H. R. Rep. No. 1147, 74th Cong., 1st Sess., 10 (1935) (same). At the same time, contrary statements, suggesting a narrow or qualified view of the word, are scarce, or nonexistent—except, of course, those made in respect to the specific (here inapplicable) exclusions written into the statute.

Further, a broad, literal reading of the statute is consistent with cases in this Court such as, say, *Sure-Tan, Inc.* v. *NLRB*, *supra* (the Act covers undocumented aliens), where the Court wrote that the "breadth of § 2(3)'s definition is striking: the Act squarely applies to 'any employee.'" 467 U. S., at 891. See *NLRB* v. *Hendricks County Rural Elec. Membership Corp.*, 454 U. S. 170, 189–190 (1981) (certain "confidential employees" fall within the definition of "employees"); *Phelps Dodge Corp.* v. *NLRB*, 313 U. S., at 185–186 (job applicants are "employees"). Cf. *Chemical Workers* v.

Pittsburgh Plate Glass Co., 404 U. S. 157, 166 (1971) (retired persons are not "employees" because they do not "work for another for hire"). See also *NLRB* v. *Hearst Publications, Inc.*, 322 U. S. 111, 131–132 (1944) (independent contractor-like newsboys are "employees"); *Packard Motor Car Co.* v. *NLRB*, 330 U. S. 485, 488–490 (1947) (company foremen are "employees"). But see 61 Stat. 137–138, 29 U. S. C. § 152(3) (1988 ed.) (amending Act to overrule *Hearst* and *Packard* by explicitly excluding independent contractors and supervisory employees).

Finally, at least one other provision of the 1947 Labor Management Relations Act seems specifically to contemplate the possibility that a company's employee might also work for a union. This provision forbids an employer (say, the company) to make payments to a person employed by a union, but simultaneously exempts from that ban wages paid by the company to "any . . . employee of a labor organization, who is *also* an employee" of the company. 29 U. S. C. § 186(c)(1) (1988 ed., Supp. V) (emphasis added). If Town & Country is right, there would not seem to be many (or any) human beings to which this last phrase could apply.

III

Town & Country believes that it can overcome these general considerations, favoring a broad, literal interpretation of the Act, through an argument that rests primarily upon the common law of agency. It first argues that our prior decisions resort to common-law principles in defining the term "employee." See *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U. S. 318, 323 (1992) (using common-law test to distinguish between "employee" and "independent contractor" under Employee Retirement Income Security Act of 1974, 29 U. S. C. § 1001 *et seq.*); *Community for Creative Non-Violence* v. *Reid*, 490 U. S. 730, 739–740 (1989) (using common-law test to distinguish between "employee" and "independent contractor" under Copyright Act of 1976, 17

U. S. C. § 101 *et seq.*); *NLRB* v. *United Ins. Co. of America*, 390 U. S. 254, 256 (1968) (using common-law test to distinguish between "employee" and "independent contractor" under NLRA). And it also points out that the Board itself, in its decision, found "no bar to applying common law agency principles to the determination whether a paid union organizer is an 'employee,'" *Town & Country Elec., Inc.*, 309 N. L. R. B., at 1254.

Town & Country goes on to argue that application of common-law agency principles *requires* an interpretation of "employee" that excludes paid union organizers. It points to a section of the Restatement (Second) of Agency (dealing with *respondeat superior* liability for torts), which says:

> "Since . . . the relation of master and servant is dependent upon the right of the master to control the conduct of the servant in the performance of the service, giving service to two masters at the same time normally involves a breach of duty by the servant to one or both of them . . . . [A person] cannot be a servant of two masters in doing an act as to which an intent to serve one necessarily excludes an intent to serve the other." Restatement (Second) of Agency § 226, Comment *a*, p. 499 (1957).

It argues that, when the paid union organizer serves the union—at least at certain times in certain ways—the organizer is acting adversely to the company. Indeed, it says, the organizer may stand ready to desert the company upon request by the union, in which case, the union, not the company, would have "the right . . . to control the conduct of the servant." *Ibid.* Thus, it concludes, the worker must be the servant (*i. e.*, the "employee") of the union alone. See *id.*, § 1, and Comment *a*, p. 8 ("agent" is one who agrees to act "subject to [a principal's] control").

As Town & Country correctly notes, in the context of reviewing lower courts' interpretations of statutory terms, we

have said on several occasions that when Congress uses the term "employee" in a statute that does not define the term, courts interpreting the statute "'must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of th[at] ter[m] . . . . In the past, when Congress has used the term "employee" without defining it, we have concluded that Congress intended to describe the conventional master-servant relationship as understood by common-law agency doctrine.'" *Nationwide Mut. Ins. Co.* v. *Darden, supra,* at 322–323 (quoting *Community for Creative Non-Violence* v. *Reid, supra,* at 739–740). At the same time, when reviewing the *Board's* interpretation of the term "employee" as it is used in the Act, we have repeatedly said that "[s]ince the task of defining the term 'employee' is one that 'has been assigned primarily to the agency created by Congress to administer the Act,' . . . the Board's construction of that term is entitled to considerable deference . . . ." *Sure-Tan, Inc.* v. *NLRB,* 467 U. S., at 891 (quoting *NLRB* v. *Hearst Publications, Inc., supra,* at 130); *NLRB* v. *Hendricks County Rural Elec. Membership Corp.,* 454 U. S., at 177–190. In some cases, there may be a question about whether the Board's departure from the common law of agency with respect to particular questions and in a particular statutory context, renders its interpretation unreasonable. See *NLRB* v. *United Ins. Co., supra,* at 256 ("independent contractor" exclusion). But no such question is presented here since the Board's interpretation of the term "employee" is consistent with the common law.

Town & Country's common-law argument fails, quite simply, because, in our view, the Board correctly found that it lacks sufficient support in common law. The Restatement's hornbook rule (to which the quoted commentary is appended) says that a

> "person *may* be the servant of two masters . . . *at one time as to one act,* if the service to one does not involve

> *abandonment* of the service to the other." Restatement (Second) of Agency § 226, at 498 (emphasis added).

The Board, in quoting this rule, concluded that service to the union for pay does not "involve abandonment of . . . service" to the company. 309 N. L. R. B., at 1254.

And, that conclusion seems correct. Common sense suggests that as a worker goes about his or her *ordinary* tasks during a working day, say, wiring sockets or laying cable, he or she *is* subject to the control of the company employer, whether or not the union also pays the worker. The company, the worker, the union, all would expect that to be so. And, that being so, that union and company interests or control might *sometimes* differ should make no difference. As Prof. Seavey pointed out many years ago, "[o]ne can be a servant of one person for some acts and the servant of another person for other acts, even when done at the same time," for example, where "a city detective, in search of clues, finds employment as a waiter and, while serving the meals, searches the customer's pockets." W. Seavey, Handbook of the Law of Agency § 85, p. 146 (1964). The detective is the servant both "of the restaurateur" (as to the table waiting) and "of the city" (as to the pocket searching). *Ibid.* How does it differ from Prof. Seavey's example for the company to pay the worker for electrical work, and the union to pay him for organizing? Moreover, union organizers may limit their organizing to nonwork hours. See, *e. g.*, *Republic Aviation Corp.* v. *NLRB*, 324 U. S. 793 (1945); *Beth Israel Hospital* v. *NLRB*, 437 U. S. 483, 492–493 (1978). If so, union organizing, when done for pay but during *nonwork* hours, would seem equivalent to simple moonlighting, a practice wholly consistent with a company's control over its workers as to their assigned duties.

Town & Country's "abandonment" argument is yet weaker insofar as the activity that constitutes an "abandonment," *i. e.*, ordinary union organizing activity, is itself specifically protected by the Act. See, *e. g.*, *ibid.* (employer restrictions

on union solicitation during nonworking time in nonworking areas are presumptively invalid under the Act). This is true even if a company perceives those protected activities as disloyal. After all, the employer has no legal right to require that, as part of his or her service to the company, a worker refrain from engaging in protected activity.

Neither are we convinced by the practical considerations that Town & Country adds to its agency law argument. The company refers to a Union resolution permitting members to work for nonunion firms, which, the company says, reflects a union effort to "salt" nonunion companies with union members seeking to organize them. Supported by *amici curiae*, it argues that "salts" might try to harm the company, perhaps quitting when the company needs them, perhaps disparaging the company to others, perhaps even sabotaging the firm or its products. Therefore, the company concludes, Congress could not have meant paid union organizers to have been included as "employees" under the Act.

This practical argument suffers from several serious problems. For one thing, nothing in this record suggests that such acts of disloyalty were present, in kind or degree, to the point where the company might lose control over the worker's normal workplace tasks. Certainly the Union's resolution contains nothing that suggests, requires, encourages, or condones impermissible or unlawful activity. App. 256–258. For another thing, the argument proves too much. If a paid union organizer might quit, leaving a company employer in the lurch, so too might an unpaid organizer, or a worker who has found a better job, or one whose family wants to move elsewhere. And if an overly zealous union organizer might hurt the company through unlawful acts, so might another unpaid zealot (who may know less about the law), or a dissatisfied worker (who may lack an outlet for his or her grievances). This does not mean they are not "employees."

Further, the law offers alternative remedies for Town & Country's concerns, short of excluding paid or unpaid union

organizers from all protection under the Act. For example, a company disturbed by legal but undesirable activity, such as quitting without notice, can offer its employees fixed-term contracts, rather than hiring them "at will" as in the case before us; or it can negotiate with its workers for a notice period. A company faced with unlawful (or possibly unlawful) activity can discipline or dismiss the worker, file a complaint with the Board, or notify law enforcement authorities. See, *e. g.*, *NLRB* v. *Electrical Workers*, 346 U. S. 464, 472–478 (1953); *Willmar Elec. Service* v. *NLRB*, 968 F. 2d, at 1330 (arsonist who is also union member is still an "employee," but may be discharged). See also *Budd Mfg. Co.* v. *NLRB*, 138 F. 2d 86, 89–90 (CA3 1943) (worker who was intoxicated while on duty, "came to work when he chose and . . . left the plant and his shift as he pleased," and utterly failed to perform his assigned duties is still an "employee" protected under the Act), cert. denied, 321 U. S. 778 (1944). And, of course, an employer may as a rule limit the access of *non*employee union organizers to company property. *Lechmere, Inc.* v. *NLRB*, 502 U. S. 527, 538 (1992); *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105, 112 (1956).

This is not to say that the law treats paid union organizers like other company employees in every labor law context. For instance, the Board states that, at least sometimes, a paid organizer may not share a sufficient "community of interest" with other employees (as to wages, hours, and working conditions) to warrant inclusion in the same bargaining unit. Brief for National Labor Relations Board 33, n. 14. See, *e. g.*, *NLRB* v. *Hendricks County Rural Elec. Membership Corp.*, 454 U. S., at 190 (some confidential workers, although "employees," may be excluded from bargaining unit). We need not decide this matter. Nor do we express any view about any of the other matters Town & Country raised before the Court of Appeals, such as whether or not Town & Country's conduct (in refusing to interview, or to retain, "employees" who were on the union's payroll) amounted to an

unfair labor practice. See 34 F. 3d, at 629. We hold only that the Board's construction of the word "employee" is lawful; that term does not exclude paid union organizers.

IV

For these reasons the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

THOMPSON *v.* KEOHANE, WARDEN, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 94–6615. Argued October 11, 1995—Decided November 29, 1995

During a two-hour, tape-recorded session at Alaska state trooper headquarters, petitioner Thompson confessed he had killed his former wife. Thompson maintained that the troopers gained his confession without according him the warnings required by *Miranda* v. *Arizona*, 384 U. S. 436. The Alaska trial court denied his motion to suppress the confession, however, ruling that he was not "in custody" for *Miranda* purposes, therefore the troopers were not required to inform him of his *Miranda* rights. After a trial at which the prosecution played the tape-recorded confession, the jury found Thompson guilty of first-degree murder, and the Court of Appeals of Alaska affirmed his conviction. The Federal District Court denied Thompson's petition for a writ of habeas corpus, and the Ninth Circuit affirmed. Both courts held that a state court's ruling that a defendant was not "in custody" for *Miranda* purposes qualifies as a "fact" determination entitled to a presumption of correctness under 28 U. S. C. § 2254(d).

Held: State-court "in custody" rulings, made to determine whether *Miranda* warnings are due, do not qualify for a presumption of correctness under § 2254(d). Such rulings do not resolve "a factual issue." Instead, they resolve mixed questions of law and fact and therefore warrant independent review by the federal habeas court. Pp. 107–116.

(a) Section 2254(d) declares that, in a federal habeas proceeding instituted by a person in custody pursuant to a state-court judgment, the state court's determination of "a factual issue" ordinarily "shall be presumed to be correct." This Court has held that "basic, primary, or historical facts" are the "factual issue[s]" to which the statutory presumption of correctness dominantly relates. See, *e. g.*, *Miller* v. *Fenton*, 474 U. S. 104, 112. Nonetheless, the proper characterization of a question as one of fact or law is sometimes slippery. Two lines of decisions compose the Court's § 2254(d) law/fact jurisprudence. In several cases, the Court has classified as "factual issues" within § 2254(d)'s compass questions extending beyond the determination of "what happened." The resolution of the issues involved in these cases, notably competency to stand trial and juror impartiality, depends heavily on the trial court's superior ability to appraise witness credibility and demeanor. On the

other hand, the Court has recognized the "uniquely legal dimension" presented by issues such as the voluntariness of a confession and the effectiveness of counsel's assistance and has ranked these as questions of law for § 2254(d) purposes. "What happened" determinations in these cases warrant a presumption of correctness, but "the ultimate question," the Court has declared, remains outside § 2254(d)'s domain and is "a matter for independent federal determination." *Ibid.* Pp. 107–112.

(b) The ultimate "in custody" determination for *Miranda* purposes fits within the latter class of cases. Two discrete inquiries are essential to the determination whether there was "a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California* v. *Beheler*, 463 U. S. 1121, 1125. The first inquiry—*i. e.*, what circumstances surrounded the interrogation—is distinctly factual and state-court findings in response to that inquiry attract a presumption of correctness under § 2254(d). The second inquiry—*i. e.*, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave—calls for application of the controlling legal standard to the historical facts and thus presents a "mixed question of law and fact" qualifying for independent review. The practical considerations that have prompted the Court to type questions like juror bias and competency to stand trial as "factual issue[s]" do not dominate "in custody" inquiries. In such inquiries, the trial court's superior capacity to resolve credibility issues is not the foremost factor. Notably absent from the trial court's purview is any first-person vantage on whether a defendant, when interrogated, was so situated as to be "in custody" for *Miranda* purposes. Thus, once the historical facts are resolved, the state court is not in an appreciably better position than the federal habeas court to make the ultimate determination of the consistency of the law enforcement officer's conduct with the federal *Miranda* warning requirement. Furthermore, classifying "in custody" as a determination qualifying for independent review should serve legitimate law enforcement interests as effectively as it serves to ensure protection of the right against self-incrimination. As the Court's decisions bear out, the law declaration aspect of independent review potentially may guide police, unify precedent, and stabilize the law. Pp. 112–116.

34 F. 3d 1073, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., joined, *post*, p. 116.

Julie R. O'Sullivan, by appointment of the Court, 513 U. S. 1137, argued the cause and filed briefs for petitioner.

Cynthia M. Hora, Assistant Attorney General of Alaska, argued the cause for respondents. With her on the brief was *Bruce M. Botelho*, Attorney General, *pro se*.*

JUSTICE GINSBURG delivered the opinion of the Court.

During a two-hour, tape-recorded session at Alaska state trooper headquarters, petitioner Carl Thompson confessed that he killed his former wife. Thompson's confession was placed in evidence at the ensuing Alaska state-court trial,

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*Briefs of *amici curiae* urging affirmance were filed for the State of Florida et al. by *Robert A. Butterworth*, Attorney General of Florida, and *Carolyn J. Mosley*, Assistant Attorney General, *Grant Woods*, Attorney General of Arizona, *Daniel E. Lungren*, Attorney General of California, *Gale A. Norton*, Attorney General of Colorado, *John M. Bailey*, Chief State's Attorney of Connecticut, *M. Jane Brady*, Attorney General of Delaware, *Margery S. Bronster*, Attorney General of Hawaii, *Alan G. Lance*, Attorney General of Idaho, *Pamela Carter*, Attorney General of Indiana, *Tom Miller*, Attorney General of Iowa, *Carla J. Stovall*, Attorney General of Kansas, *Chris Gorman*, Attorney General of Kentucky, *Richard P. Ieyoub*, Attorney General of Louisiana, *Andrew Ketterer*, Attorney General of Maine, *J. Joseph Curran, Jr.*, Attorney General of Maryland, *Frank J. Kelley*, Attorney General of Michigan, *Hubert H. Humphrey III*, Attorney General of Minnesota, *Mike Moore*, Attorney General of Mississippi, *Jerimiah W. "Jay" Nixon*, Attorney General of Missouri, *Joseph P. Mazurek*, Attorney General of Montana, *Don Stenberg*, Attorney General of Nebraska, *Frankie Sue Del Papa*, Attorney General of Nevada, *Jeffrey R. Howard*, Attorney General of New Hampshire, *Deborah T. Poritz*, Attorney General of New Jersey, *Dennis C. Vacco*, Attorney General of New York, *Michael F. Easley*, Attorney General of North Carolina, *Betty D. Montgomery*, Attorney General of Ohio, *Drew Edmondson*, Attorney General of Oklahoma, *Ernest D. Preate, Jr.*, Attorney General of Pennsylvania, *Charles Molony Condon*, Attorney General of South Carolina, *Mark Barnette*, Attorney General of South Dakota, *Charles W. Burson*, Attorney General of Tennessee, *Dan Morales*, Attorney General of Texas, *Jan Graham*, Attorney General of Utah, *Jeffrey L. Amestoy*, Attorney General of Vermont, *James S. Gilmore III*, Attorney General of Virginia, and *Christine O. Gregoire*, Attorney General of Washington; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger*.

and he was convicted of first-degree murder. Challenging his conviction in a federal habeas corpus proceeding, Thompson maintained that the Alaska troopers gained his confession without according him the warnings *Miranda* v. *Arizona*, 384 U. S. 436 (1966), requires: that he could remain silent; that anything he said could be used against him in court; and that he was entitled to an attorney, either retained or appointed.

Miranda warnings are due only when a suspect interrogated by the police is "in custody." The state trial and appellate courts determined that Thompson was not "in custody" when he confessed. The statute governing federal habeas corpus proceedings, 28 U. S. C. § 2254, directs that, ordinarily, state-court fact findings "shall be presumed to be correct." § 2254(d). The question before this Court is whether the state-court determination that Thompson was not "in custody" when he confessed is a finding of fact warranting a presumption of correctness, or a matter of law calling for independent review in federal court. We hold that the issue whether a suspect is "in custody," and therefore entitled to *Miranda* warnings, presents a mixed question of law and fact qualifying for independent review.

I

On September 10, 1986, two moose hunters discovered the body of a dead woman floating in a gravel pit lake on the outskirts of Fairbanks, Alaska. The woman had been stabbed 29 times. Notified by the hunters, the Alaska state troopers issued a press release seeking assistance in identifying the body. Thompson called the troopers on September 11 to inform them that his former wife, Dixie Thompson, fit the description in the press release and that she had been missing for about a month. Through a dental examination, the troopers conclusively established that the corpse was Dixie Thompson. On September 15, a trooper called

Thompson and asked him to come to headquarters, purportedly to identify personal items the troopers thought belonged to Dixie Thompson. It is now undisputed, however, that the trooper's primary reason for contacting Thompson was to question him about the murder.

Thompson drove to the troopers' headquarters in his pickup truck and, upon arriving, immediately identified the items as Dixie's. He remained at headquarters, however, for two more hours while two unarmed troopers continuously questioned him in a small interview room and tape-recorded the exchange. The troopers did not inform Thompson of his *Miranda* rights. Although they constantly assured Thompson he was free to leave, they also told him repeatedly that they knew he had killed his former wife. Informing Thompson that execution of a search warrant was underway at his home, and that his truck was about to be searched pursuant to another warrant, the troopers asked questions that invited a confession. App. 43–79.[1] Eventually, Thompson told the troopers he killed Dixie.

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[1] These passages from the transcript of the tape-recorded interrogation indicate the tenor of the questioning:

"Q Do you know—of course, I don't mean to take up a lot of your time, you—you can leave any time that you want to, if you've got something else going on.

"A Oh no (indiscernible) around here, no.

"Q I know we called you and probably woke you up and. . . .

"A No, I was just laying there.

"Q Okay. But you know, you can go any time you want to. We got a—you know, we're trying to—trying to crack on this thing, and I—I don't imagine it's any secret to you that there are some of your—your friends or associates who have been kind of calling up and saying, you know, they've been pointing at you. . . .

"A Yeah, that (indiscernible) guy you know and we've been friends for ten years, you know, and this guy is starting to say stuff that I never even said. . . ." App. 44–45.

"Q . . . And I'm willing to work with you on this thing to make the best of a bad situation. I can't tell you that this isn't a bad situation. I mean

As promised, the troopers permitted Thompson to leave, but impounded his truck. Left without transportation, Thompson accepted the troopers' offer of a ride to his friend's

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you're free to get up and walk out of here now and—and never talk to me again. But what I'm telling you now is this is probably the last chance we'll have to—for you to say something that other people are gonna believe because let's just—let's just say that there's enough (indiscernible) here already that we can—we can prove conclusively beyond a reasonable doubt that—that you were responsible for this thing—this thing. Well really there's a lot that she's responsible for, but you're the guy that's stuck with the problem. . . .

"A I've already told you the story.

"Q . . . Well you haven't told me the critical part and you haven't told me the part about where Dixie gets killed.

"A And I don't know about that. That's your guys' job. You're supposed to know that.

"Q Well like I told you, we know the who, the where, the when, the how. The thing we don't know is the why. And that's—that's the thing we've got to kind of get straight here today between you and I. See I know that you did this thing. There's—there's no question in my mind about that. I can see it. I can see it when I'm looking at you. And I know that you care about Dixie. I mean this isn't something that you wanted to happen. . . .

. . . . . .

"Q . . . I think that now it's the time for you to come honest about this thing, because if you turn around later and try to. . . .

"A I am being honest about it.

"Q No, you haven't. You told part of the truth and you told a lot of it, but you haven't told all of it. . . . I mean your—you're not probably lying directly to me, but you're lying by omission . . . . I can tell you that right now there's a search warrant being served out at [your home] and a search warrant for your truck is gonna be served and we've got a forensic expert up from—from Anchorage . . . .

"A Huh.

"Q . . . And I don't believe that you're a bad person. I really don't. . . . [W]hat happened here was never planned, what happened here was one of these things that just happen. . . . And when it happened you're stuck with this—I mean you're stuck with a hell of a mess now. She's got—she's finally got you into more trouble than she can possibly imagine. I mean she's brought this thing on you. She causes that. . . . I mean I don't know whether she started the thing by grabbing the knife and saying she was

house. Some two hours later, the troopers arrested Thompson and charged him with first-degree murder.

The Alaska trial court, without holding an evidentiary hearing, denied Thompson's motion to suppress his September 15 statements. Tr. 118 (Dec. 12, 1986); Tr. 142 (Mar. 18, 1987). Deciding the motion on the papers submitted, the trial court ruled that Thompson was not "in custody" for *Miranda* purposes, therefore the troopers had no obligation to inform him of his *Miranda* rights. App. 8–9.[2] Applying an objective test to resolve the "in custody" question, the court asked whether "'a reasonable person would feel he was not free to leave and break off police questioning.'" *Id.*, at 7 (quoting *Hunter* v. *State*, 590 P. 2d 888, 895 (Alaska 1979)). These features, the court indicated, were key: Thompson arrived at the station in response to a trooper's request; two unarmed troopers in plain clothes questioned him; Thompson was told he was free to go at any time; and he was not arrested at the conclusion of the interrogation. App. 7–8. Although the trial court held that, under the totality of the circumstances, a reasonable person would have felt free to leave, it also observed that the troopers' subsequent actions—releasing and shortly thereafter arresting Thompson—rendered the question "very close." *Id.*, at 8–9.

After a trial, at which the prosecution played the tape-recorded confession, the jury found Thompson guilty of first-degree murder and tampering with evidence. The Court of Appeals of Alaska affirmed Thompson's conviction, concluding, among other things, that the troopers had not placed Thompson "in custody," and therefore had no obligation to give him *Miranda* warnings. *Thompson* v. *State*,

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gonna (indiscernible) at you and it got turned around or just what happened. I mean I don't know those things. . . ." *Id.*, at 49–51.

[2] The trial court also rejected Thompson's contention that his confession was involuntary. On both direct and habeas review, Thompson unsuccessfully asserted the involuntariness of his confession. His petition to this Court, however, does not present that issue.

768 P. 2d 127, 131 (Alaska App. 1989).[3] The Alaska Supreme Court denied discretionary review. App. 24.

Thompson filed a petition for a writ of habeas corpus in the United States District Court for the District of Alaska. The District Court denied the writ, according a presumption of correctness under 28 U. S. C. § 2254(d) to the state court's conclusion that, when Thompson confessed, he was not yet "in custody" for *Miranda* purposes. App. 37. The Court of Appeals for the Ninth Circuit affirmed without publishing an opinion. 34 F. 3d 1073 (1994). Based on Circuit precedent,[4] the court held that "a state court's determination that a defendant was not in custody for purposes of *Miranda* is a question of fact entitled to the presumption of correctness under 28 U. S. C. § 2254(d)." App. 41.

Federal Courts of Appeals disagree on the issue Thompson asks us to resolve: whether state-court "in custody" determinations are matters of fact entitled to a presumption of correctness under 28 U. S. C. § 2254(d), or mixed questions of law and fact warranting independent review by the federal habeas court. Compare *Feltrop* v. *Delo*, 46 F. 3d 766, 773 (CA8 1995) (applying presumption of correctness), with *Jacobs* v. *Singletary*, 952 F. 2d 1282, 1291 (CA11 1992) (conducting independent review). Because uniformity among federal courts is important on questions of this order, we granted certiorari to end the division of authority. 513 U. S.

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[3] It is unclear in this case what deference the Alaska appellate court accorded to the trial court's conclusion that petitioner was not "in custody"; in later decisions, the Alaska Court of Appeals reviewed the trial courts' "in custody" determinations for "clear error." See *Higgins* v. *State*, 887 P. 2d 966, 971 (Alaska App. 1994); *McKillop* v. *State*, 857 P. 2d 358, 361 (Alaska App. 1993).

[4] The panel relied on *Krantz* v. *Briggs*, 983 F. 2d 961, 964 (CA9 1993), which held that state-court "in custody" determinations warrant a presumption of correctness under § 2254(d) if the state court made factfindings after a hearing on the merits.

1126 (1995). We now hold that the 28 U. S. C. § 2254(d) presumption does not apply to "in custody" rulings; accordingly, we vacate the Ninth Circuit's judgment.

II

"[I]n-custody interrogation[s]," this Court recognized in *Miranda* v. *Arizona*, place "inherently compelling pressures" on the persons interrogated. 384 U. S., at 467. To safeguard the uncounseled individual's Fifth Amendment privilege against self-incrimination, the *Miranda* Court held, suspects interrogated while in police custody must be told that they have a right to remain silent, that anything they say may be used against them in court, and that they are entitled to the presence of an attorney, either retained or appointed, at the interrogation. *Id.*, at 444. The Court defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Ibid.*; see also *Oregon* v. *Mathiason*, 429 U. S. 492, 495 (1977) *(per curiam)* (duty to give *Miranda* warnings is triggered "only where there has been such a restriction on a person's freedom as to render him 'in custody' ") (quoted in *Stansbury* v. *California*, 511 U. S. 318, 322 (1994) *(per curiam)*). Our task in petitioner Thompson's case is to identify the standard governing federal habeas courts' review of state-court "in custody" determinations.[5]

A

Section 2254 governs federal habeas corpus proceedings instituted by persons in custody pursuant to the judgment of a state court. In such proceedings, § 2254(d) declares,

[5] Claims that state courts have incorrectly decided *Miranda* issues, as *Withrow* v. *Williams*, 507 U. S. 680 (1993), confirms, are appropriately considered in federal habeas review.

state-court determinations of "a factual issue" "shall be presumed to be correct" absent one of the enumerated exceptions.[6] This provision, added in a 1966 amendment, Act of

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[6] Section 2254(d) lists eight exceptions to the presumption of correctness. In full, 28 U. S. C. § 2254(d) reads:

"In any proceeding instituted in a Federal court by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination after a hearing on the merits of a factual issue, made by a State court of competent jurisdiction in a proceeding to which the applicant for the writ and the State or an officer or agent thereof were parties, evidenced by a written finding, written opinion, or other reliable and adequate written indicia, shall be presumed to be correct, unless the applicant shall establish or it shall otherwise appear, or the respondent shall admit—

"(1) that the merits of the factual dispute were not resolved in the State court hearing;

"(2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing;

"(3) that the material facts were not adequately developed at the State court hearing;

"(4) that the State court lacked jurisdiction of the subject matter or over the person of the applicant in the State court proceeding;

"(5) that the applicant was an indigent and the State court, in deprivation of his constitutional right, failed to appoint counsel to represent him in the State court proceeding;

"(6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; or

"(7) that the applicant was otherwise denied due process of law in the State court proceeding;

"(8) or unless that part of the record of the State court proceeding in which the determination of such factual issue was made, pertinent to a determination of the sufficiency of the evidence to support such factual determination, is produced as provided for hereinafter, and the Federal court on a consideration of such part of the record as a whole concludes that such factual determination is not fairly supported by the record:

"And in an evidentiary hearing in the proceeding in the Federal court, when due proof of such factual determination has been made, unless the existence of one or more of the circumstances respectively set forth in paragraphs numbered (1) to (7), inclusive, is shown by the applicant, otherwise appears, or is admitted by the respondent, or unless the court concludes pursuant to the provisions of paragraph numbered (8) that the record in the State court proceeding, considered as a whole, does not fairly

Nov. 2, 1966, Pub. L. 89–711, 80 Stat. 1105–1106, received the Court's close attention in *Miller* v. *Fenton*, 474 U. S. 104 (1985). As the *Miller* Court observed, § 2254(d) "was an almost verbatim codification of the standards delineated in *Townsend* v. *Sain*, 372 U. S. 293 (1963), for determining when a district court must hold an evidentiary hearing before acting on a habeas petition." *Miller*, 474 U. S., at 111.[7] *Townsend* counseled that, if the habeas petitioner has had in state court "a full and fair hearing . . . resulting in reliable findings," the federal court "ordinarily should . . . accept the facts as found" by the state tribunal. 372 U. S., at 318. Section 2254(d) essentially "elevated [the *Townsend* Court's] exhortation into a mandatory presumption of correctness." *Miller*, 474 U. S., at 111–112; see also *id.*, at 112 (emphasizing respect appropriately accorded "a coequal state judiciary" and citing *Culombe* v. *Connecticut*, 367 U. S. 568, 605 (1961) (opinion of Frankfurter, J.)).

Just as *Townsend*'s instruction on the respect appropriately accorded state-court factfindings is now captured in the § 2254(d) presumption, so we have adhered to *Townsend*'s definition of the § 2254(d) term "factual issue."[8] The *Townsend* Court explained that by "'issues of fact,'" it meant

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support such factual determination, the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State court was erroneous."

[7] The list of circumstances warranting an evidentiary hearing in a federal habeas proceeding set out in H. R. Rep. No. 1384, 88th Cong., 2d Sess., 25 (1964), is similar to the list set out in *Townsend* v. *Sain*, 372 U. S. 293, 313 (1963). The legislative history further indicates that the House Judiciary Committee, in framing its recommendations, was mindful of the Court's recent precedent, including *Townsend*. H. R. Rep. No. 1384, *supra*, at 24–25. See also 1 J. Liebman & R. Hertz, Federal Habeas Corpus Practice and Procedure § 20.1a, pp. 537–538 (2d ed. 1994) (description of interplay between habeas statute and *Townsend*).

[8] *Keeney* v. *Tamayo-Reyes*, 504 U. S. 1 (1992), partially overruled *Townsend* on a point not relevant here; *Keeney* held that a "cause-and-prejudice" standard, rather than the "deliberate by-pass" standard, is the correct standard for excusing a habeas petitioner's failure to develop a material fact in state-court proceedings. 504 U. S., at 5–6.

"basic, primary, or historical facts: facts 'in the sense of a recital of external events and the credibility of their narrators . . . .'" 372 U. S., at 309, n. 6 (quoting *Brown* v. *Allen*, 344 U. S. 443, 506 (1953) (opinion of Frankfurter, J.)). "So-called mixed questions of fact and law, which require the application of a legal standard to the historical-fact determinations," the *Townsend* Court added, "are not facts in this sense." 372 U. S., at 309, n. 6.[9] In applying § 2254(d), we have reaffirmed that "basic, primary, or historical facts" are the "factual issue[s]" to which the statutory presumption of correctness dominantly relates. See, *e. g.*, *Miller*, 474 U. S., at 112 ("[S]ubsidiary factual questions" in alleged involuntariness of confession cases are subject to the § 2254(d) presumption, but "the ultimate question"—requiring a "totality of the circumstances" assessment—"is a matter for independent federal determination."); *Cuyler* v. *Sullivan*, 446 U. S. 335, 342 (1980) ("mixed determination[s] of law and fact" generally are not subject to the § 2254(d) presumption of correctness).

It must be acknowledged, however, "that the Court has not charted an entirely clear course in this area." *Miller*, 474 U. S., at 113. In regard to § 2254(d), as in other contexts,[10] the proper characterization of a question as one of

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[9] See also *Brown* v. *Allen*, 344 U. S. 443, 507 (1953) (opinion of Frankfurter, J.) ("Where the ascertainment of the historical facts does not dispose of the claim but calls for interpretation of the legal significance of such facts, the District Judge must exercise his own judgment on this blend of facts and their legal values. Thus, so-called mixed questions or the application of constitutional principles to the facts as found leave the duty of adjudication with the federal judge.") (citation omitted).

[10] See, *e. g.*, *Cooter & Gell* v. *Hartmarx Corp.*, 496 U. S. 384, 401 (1990) (observing in regard to appellate review of sanctions imposed under Fed. Rule Civ. Proc. 11: "The Court has long noted the difficulty of distinguishing between legal and factual issues."); *Pullman-Standard* v. *Swint*, 456 U. S. 273, 288 (1982) (acknowledging, in relation to appellate review of intent determinations in Title VII cases, "the vexing nature of the distinction between questions of fact and questions of law").

fact or law is sometimes slippery. See *ibid.*; *Wainwright* v. *Witt*, 469 U. S. 412, 429 (1985) ("It will not always be easy to separate questions of 'fact' from 'mixed questions of law and fact' for § 2254(d) purposes . . . ."). Two lines of decisions compose the Court's § 2254(d) law/fact jurisprudence.

In several cases, the Court has classified as "factual issues" within § 2254(d)'s compass questions extending beyond the determination of "what happened." This category notably includes: competency to stand trial (*e. g.*, *Maggio* v. *Fulford*, 462 U. S. 111, 117 (1983) *(per curiam)*); and juror impartiality (*e. g.*, *Witt*, 469 U. S., at 429; *Patton* v. *Yount*, 467 U. S. 1025, 1036 (1984); *Rushen* v. *Spain*, 464 U. S. 114, 120 (1983)). While these issues encompass more than "basic, primary, or historical facts," their resolution depends heavily on the trial court's appraisal of witness credibility and demeanor. See, *e. g.*, *Witt*, 469 U. S., at 429 (Although the trial court is "applying some kind of legal standard to what [it] sees and hears," its "predominant function in determining juror bias involves credibility findings whose basis cannot be easily discerned from an appellate record."). This Court has reasoned that a trial court is better positioned to make decisions of this genre, and has therefore accorded the judgment of the jurist-observer "presumptive weight." *Miller*, 474 U. S., at 114 (when an "issue involves the credibility of witnesses and therefore turns largely on an evaluation of demeanor, there are compelling and familiar justifications for leaving the process of applying law to fact to the trial court").

On the other hand, the Court has ranked as issues of law for § 2254(d) purposes: the voluntariness of a confession (*Miller*, 474 U. S., at 116); the effectiveness of counsel's assistance (*Strickland* v. *Washington*, 466 U. S. 668, 698 (1984)); and the potential conflict of interest arising out of an attorney's representation of multiple defendants (*Cuyler*, 446 U. S., at 341–342). "What happened" issues in these cases warranted a presumption of correctness, but the Court declared "the ultimate question" outside § 2254(d)'s domain

because of its "uniquely legal dimension." *Miller*, 474 U. S., at 116; see also *Sumner* v. *Mata*, 455 U. S. 591, 597 (1982) *(per curiam)* ("[T]he constitutionality of the pretrial identification procedures used in this case is a mixed question of law and fact that is not governed by § 2254(d)."); *Brewer* v. *Williams*, 430 U. S. 387, 397, and n. 4, 403–404 (1977) (waiver of Sixth Amendment right to assistance of counsel is not a question of historical fact, but rather requires application of constitutional principles to facts).

B

The ultimate "in custody" determination for *Miranda* purposes, we are persuaded, fits within the latter class of cases. Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances,[11] would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve "the ultimate inquiry": "[was] there a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California* v. *Beheler*, 463 U. S. 1121, 1125 (1983) *(per curiam)* (quoting *Mathiason*, 429 U. S., at 495). The first inquiry, all agree, is distinctly factual. State-court findings on these scene- and action-setting questions attract a presumption of correctness under 28 U. S. C. § 2254(d). The second inquiry, however, calls for application of the controlling legal standard to the historical facts. This ultimate

[11] The "totality of the circumstances" cast of the "in custody" determination, contrary to respondents' suggestions, does not mean deferential review is in order. See, *e. g.*, *Miller* v. *Fenton*, 474 U. S. 104, 117 (1985) (state-court determination "whether, under the totality of the circumstances, the confession was obtained in a manner consistent with the Constitution" qualifies for independent review by federal habeas court).

determination, we hold, presents a "mixed question of law and fact" qualifying for independent review.

The practical considerations that have prompted the Court to type questions like juror bias and competency as "factual issue[s]," and therefore governed by § 2254(d)'s presumption of correctness, are not dominant here. As this case illustrates, the trial court's superior capacity to resolve credibility issues is not dispositive of the "in custody" inquiry.[12] Credibility determinations, as in the case of the alleged involuntariness of a confession, see *Miller*, 474 U. S., at 112, may sometimes contribute to the establishment of the historical facts and thus to identification of the "totality of the circumstances." But the crucial question entails an evaluation made after determination of those circumstances: if encountered by a "reasonable person," would the identified circumstances add up to custody as defined in *Miranda*?[13]

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[12] As earlier observed, see *supra*, at 105, the trial court decided Thompson's motion to suppress his September 15 statements on the papers submitted without holding an evidentiary hearing.

[13] Respondents observe that "reasonable person" assessments, most prominently to gauge negligence in personal injury litigation, fall within the province of fact triers. See, *e. g.*, *Cooter & Gell*, 496 U. S., at 402 (negligence determinations "generally reviewed deferentially"); *McAllister* v. *United States*, 348 U. S. 19, 20–23 (1954) (District Court finding of negligence was not "clearly erroneous"); 9A C. Wright & A. Miller, Federal Practice and Procedures § 2590 (2d ed. 1995). Traditionally, our legal system has entrusted negligence questions to jurors, inviting them to apply community standards. See W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 37, pp. 235–237 (5th ed. 1984). For that reason, "[t]he question usually is said to be one of fact," although "it should be apparent that the function of the jury in fixing the standard differs from that of the judge only in that it cannot be reduced to anything approaching a definite rule." *Id.*, at 237.

Judges alone make "in custody" assessments for *Miranda* purposes, and they do so with a view to identifying recurrent patterns, and advancing uniform outcomes. If they cannot supply "a definite rule," they nonetheless can reduce the area of uncertainty. See, *e. g.*, *Illinois* v. *Perkins*, 496 U. S. 292, 296 (1990) (*Miranda* warnings not required prior to questioning of incarcerated individual by undercover agent because suspect, unaware

See *Berkemer* v. *McCarty*, 468 U. S. 420, 442 (1984) (court must assess "how a reasonable man in the suspect's position would have understood his situation"); cf. *Miller*, 474 U. S., at 116–117 ("[A]ssessments of credibility and demeanor are not crucial to the proper resolution of the ultimate issue of 'voluntariness.'").

Unlike the *voir dire* of a juror, *Patton*, 467 U. S., at 1038, or the determination of a defendant's competency, *Maggio*, 462 U. S., at 117, which "take[s] place in open court on a full record," *Miller*, 474 U. S., at 117, the trial court does not have a first-person vantage on whether a defendant was "in custody" for *Miranda* purposes. See 474 U. S., at 117 (police interrogations yielding confessions ordinarily occur, not in court, but in an "inherently more coercive environment"). Furthermore, in fathoming the state of mind of a potential juror or a defendant in order to answer the questions, "Is she free of bias?," "Is he competent to stand trial?," the trial court makes an individual-specific decision, one unlikely to have precedential value.[14] In contrast, "in custody" determinations do guide future decisions.[15] We thus conclude

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of police presence, is not coerced); *Berkemer* v. *McCarty*, 468 U. S. 420, 436–439 (1984) (nature of suspected offense is irrelevant to duty to administer *Miranda* warnings); *Oregon* v. *Mathiason*, 429 U. S. 492, 495–496 (1977) *(per curiam)* (fact that interrogation occurs at police station does not, in itself, require *Miranda* warnings).

[14] In other contexts, we have similarly concluded that the likely absence of precedential value cuts against requiring plenary appellate review of a district court's determination. For example, in *Cooter & Gell* v. *Hartmarx Corp.*, a decision confirming that the abuse-of-discretion standard applies to appellate review of sanctions under Federal Rule of Civil Procedure 11, we observed that plenary review would likely "'fail to produce the normal law-clarifying benefits that come from an appellate decision on a question of law . . . .'" 496 U. S., at 404 (quoting *Pierce* v. *Underwood*, 487 U. S. 552, 561 (1988)).

[15] See, *e. g.*, *Stansbury* v. *California*, 511 U. S. 318, 322–324 (1994) *(per curiam)* (review of precedent demonstrated a "well settled" principle: officer's undisclosed, subjective belief that person questioned is a suspect is irrelevant to objective "in custody" determination); *Pennsylvania*

that once the historical facts are resolved, the state court is not "in an appreciably better position than the federal habeas court to make [the ultimate] determination" of the consistency of the law enforcement officer's conduct with the federal *Miranda* warning requirement. See 474 U. S., at 117.

Notably, we have treated the "in custody" question as one of law when States complained that their courts had erroneously expanded the meaning of "custodial interrogation." See *Beheler*, 463 U. S., at 1121–1125 (summarily reversing California Court of Appeal's judgment that respondent was "in custody"); *Mathiason*, 429 U. S., at 494–496 (summarily reversing Oregon Supreme Court's determination that respondent was "in custody"); cf. *Oregon* v. *Hass*, 420 U. S. 714, 719 (1975) ("[A] State may not impose . . . greater restrictions [on police activity] as a matter of *federal constitutional law* when this Court specifically refrains from imposing them."). It would be anomalous to type the question differently when an individual complains that the state courts had erroneously constricted the circumstances that add up to an "in custody" conclusion.

Classifying "in custody" as a determination qualifying for independent review should serve legitimate law enforcement interests as effectively as it serves to ensure protection of the right against self-incrimination. As our decisions bear out, the law declaration aspect of independent review potentially may guide police, unify precedent, and stabilize the law. See, *e. g.*, *Berkemer*, 468 U. S., at 436–439 (routine traffic stop—typically temporary, brief, and public—does not place driver "in custody" for *Miranda* warning purposes); see also Monaghan, Constitutional Fact Review, 85 Colum. L. Rev. 229, 273–276 (1985) ("norm elaboration occurs best when the Court has power to consider fully a series of closely

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v. *Bruder*, 488 U. S. 9, 11 (1988) *(per curiam)* (summary reversal appropriate because state-court decision was contrary to rule of *Berkemer* v. *McCarty*, 468 U. S. 420 (1984), that ordinary traffic stops do not involve "custody" for purposes of *Miranda*).

related situations"; case-by-case elaboration when a constitutional right is implicated may more accurately be described as law declaration than as law application).

* * *

Applying § 2254(d)'s presumption of correctness to the Alaska court's "in custody" determination, both the District Court and the Court of Appeals ruled that Thompson was not "in custody" and thus not entitled to *Miranda* warnings. Because we conclude that state-court "in custody" determinations warrant independent review by a federal habeas court, the judgment of the United States Court of Appeals for the Ninth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE joins, dissenting.

Carl Thompson murdered his ex-wife, stabbing her 29 times. He then wrapped her body in chains and a bedspread and tossed the corpse into a water-filled gravel pit. As part of their investigation, police officers in Fairbanks, Alaska, questioned Thompson about his role in the murder, and Thompson confessed. Thompson was repeatedly told that he could leave the interview and was, in fact, permitted to leave at the close of questioning. I believe that the Alaska trial judge—who first decided this question almost a decade ago—was in a far better position than a federal habeas court to determine whether Thompson was "in custody" for purposes of *Miranda* v. *Arizona*, 384 U. S. 436 (1966). So long as that judgment finds fair support in the record, I would presume that it is correct. I dissent.

To determine whether a person is "in custody" under *Miranda*, "a court must examine all of the circumstances surrounding the interrogation, but 'the ultimate inquiry is simply whether there [was] a "formal arrest or restraint on

freedom of movement" of the degree associated with a formal arrest.'" *Stansbury* v. *California*, 511 U. S. 318, 322 (1994) (quoting *California* v. *Beheler*, 463 U. S. 1121, 1125 (1983) *(per curiam)*, quoting in turn *Oregon* v. *Mathiason*, 429 U. S. 492, 495 (1977) *(per curiam)*). "'[T]he only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.'" 511 U. S., at 324 (quoting *Berkemer* v. *McCarty*, 468 U. S. 420, 442 (1984)).

I agree with the majority that a legal standard must be applied by a state trial judge in making the *Miranda* custody inquiry. In light of our more recent decisions applying § 2254(d), however, I do not agree that the standards articulated in *Townsend* v. *Sain*, 372 U. S. 293 (1963), overruled in part by *Keeney* v. *Tamayo-Reyes*, 504 U. S. 1, 5 (1992), for distinguishing factual issues from mixed questions of law and fact, dictate a result either way in this case. See, *e. g.*, *Wainwright* v. *Witt*, 469 U. S. 412, 429 (1985) (juror bias determination is a question of fact, even though "[t]he trial judge is of course applying some kind of legal standard to what he sees and hears"); *Patton* v. *Yount*, 467 U. S. 1025, 1037, n. 12 (1984) (juror bias is a question of fact although "[t]here are, of course, factual and legal questions to be considered in deciding whether a juror is qualified"). Because the *Miranda* custody issue "falls somewhere between a pristine legal standard and a simple historical fact," we must decide, "as a matter of the sound administration of justice, [which] judicial actor is better positioned . . . to decide the issue in question." *Miller* v. *Fenton*, 474 U. S. 104, 114 (1985).

The state trial judge is, in my estimation, the best-positioned judicial actor to decide the relatively straightforward and fact-laden question of *Miranda* custody. See *California* v. *Beheler*, *supra*, at 1128 (STEVENS, J., dissenting) (state "courts are far better equipped than we are to assess the police practices that are highly relevant to the determination whether particular circumstances amount to custodial

interrogation"). In making the custody determination, the state trial judge must consider a complex of diverse and case-specific factors in an effort to gain an overall sense of the defendant's situation at the time of the interrogation. These factors include, at a minimum, the location, timing, and length of the interview, the nature and tone of the questioning, whether the defendant came to the place of questioning voluntarily, the use of physical contact or physical restraint, and the demeanor of all of the key players, both during the interview and in any proceedings held in court. In assessing all of these facts, the state trial judge will often take live testimony, consider documentary evidence, and listen to audiotapes or watch videotapes of the interrogation. Assessments of credibility and demeanor are crucial to the ultimate determination, for the trial judge will often have to weigh conflicting accounts of what transpired. The trial judge is also likely to draw inferences, which are similarly entitled to deference, from "physical or documentary evidence or . . . other facts." *Anderson* v. *Bessemer City*, 470 U. S. 564, 574 (1985). The *Miranda* custody inquiry is thus often a matter of "shades and degrees," *Withrow* v. *Williams*, 507 U. S. 680, 712 (1993) (O'CONNOR, J., concurring in part and dissenting in part), that requires the state trial judge to make any number of "'fact-intensive, close calls.'" *Cooter & Gell* v. *Hartmarx Corp.*, 496 U. S. 384, 404 (1990) (citation omitted).

The majority is quite right that the test contains an objective component—how a "reasonable man in the suspect's position would have understood his situation," *Stansbury* v. *California*, *supra*, at 324—but this alone cannot be dispositive of whether the determination should be reviewed deferentially. See, *e. g.*, *Cooter & Gell* v. *Hartmarx Corp.*, *supra*, at 402 (Rule 11 and negligence determinations, both of which involve objective tests, are subject to deferential review). "[T]he line between pure facts . . . and . . . the application to them of a legal standard that is as non-technical—as commonsensical—as reasonableness is a faint one." *United*

States v. *Humphrey*, 34 F. 3d 551, 559 (CA7 1994) (Posner, C. J., concurring). It distorts reality to say that all of the subtle, factbound assessments that go into determining what it was like to be in the suspect's shoes simply go out the window when it comes time for the "ultimate inquiry," *ante*, at 112, of how a reasonable person would have assessed the situation. "The state trial court [is] in the unique position, after observing [the defendant] and listening to the evidence presented at trial, to determine whether a reasonable person in [defendant's] position would have felt free to leave the police station." *Purvis* v. *Dugger*, 932 F. 2d 1413, 1419 (CA11 1991), cert. denied, 503 U. S. 940 (1992). It is only in light of these case-specific determinations that the reasonable person test can be meaningfully applied. See *Cooter & Gell* v. *Hartmarx Corp.*, *supra*, at 402 ("Familiar with the issues and litigants, the [trial] court is better situated than the court of appeals to marshal the pertinent facts and apply the fact-dependent legal standard").

For these reasons, I have no doubt that the state trier of fact is best situated to put himself in the suspect's shoes, and consequently is in a better position to determine what it would have been like for a reasonable man to be in the suspect's shoes. Federal habeas courts, often reviewing the cold record as much as a decade after the initial determination, are in an inferior position to make this assessment. Though some of the state court's factual determinations may, perhaps, be reflected on the record, many of the case-specific assessments that underlie the state trial judge's ultimate determination are subtle, difficult to reduce to writing, and unlikely to be preserved in any meaningful way for review on appeal. "State courts are fully qualified to identify constitutional error and evaluate its prejudicial effect." *Brecht* v. *Abrahamson*, 507 U. S. 619, 636 (1993). "Absent indication to the contrary, state courts should be presumed to have applied federal law as faithfully as federal courts." *Withrow* v. *Williams*, *supra*, at 723 (SCALIA, J., concurring in part and

dissenting in part). We insult our colleagues in the States when we imply, as we do today, that state judges are not sufficiently competent and reliable to make a decision as straightforward as whether a person was in custody for purposes of *Miranda*. See 507 U. S., at 714 (O'CONNOR, J., concurring in part and dissenting in part) ("We can depend on law enforcement officials to administer *[Miranda]* warnings in the first instance and the state courts to provide a remedy when law enforcement officers err").[1]

I also see no reason to remand this case to the Ninth Circuit for further analysis. There is no dispute that Thompson came to the police station voluntarily. There is no dispute that he was repeatedly told he could leave the police station at any time. And it is also clear that he left the police station freely at the end of the interrogation. In *California* v. *Beheler*, 463 U. S. 1121 (1983) *(per curiam)*, we held that a person is not in custody if "the suspect is not placed under arrest, voluntarily comes to the police station, and is allowed to leave unhindered by police after a brief interview." *Ibid.* And in *Oregon* v. *Mathiason*, 429 U. S. 492 (1977) *(per curiam)*, we found it "clear" that the defendant was not in *Miranda* custody where he "came voluntarily to the police

[1] The majority believes that federal oversight of state-court custody judgments is necessary to "advanc[e] uniform outcomes," and when that cannot be achieved, to "reduce the area of uncertainty." *Ante*, at 113, n. 13. While uniformity of outcome is a virtue worth pursuing generally, we determined in a line of cases beginning with *Teague* v. *Lane*, 489 U. S. 288 (1989) (plurality opinion), that on habeas, uniformity must give way to concerns of comity and finality. See *id.*, at 310 ("The 'costs imposed upon the State[s] by retroactive application of new rules of constitutional law on habeas corpus . . . generally far outweigh the benefits of this application' ") (quoting *Solem* v. *Stumes*, 465 U. S. 638, 654 (1984) (Powell, J., concurring in judgment)). Federal habeas review is not the time for fine-tuning constitutional rules of criminal procedure at the expense of valid state convictions based on reasonable applications of then-existing law. See *Butler* v. *McKellar*, 494 U. S. 407, 414 (1990) ("The 'new rule' principle . . . validates reasonable, good-faith interpretations of existing precedents made by state courts").

station, . . . was immediately informed that he was not under arrest," and "[a]t the close of a ½-hour interview . . . did in fact leave the police station without hindrance." *Id.*, at 495; see also *ibid.* ("Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect"). Because Thompson cannot establish a *Miranda* violation even under *de novo* review, I would resolve that question now, and avoid putting the State of Alaska to the uncertainty and expense of defending for the sixth time in nine years an eminently reasonable judgment secured against a confessed murderer.[2]

I respectfully dissent.

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[2] To the extent Thompson's claim has any merit at all, it seems certain that relief is barred by our decision in *Teague* v. *Lane*, *supra*, at 301, 310 (plurality opinion), and its progeny. "The interests in finality, predictability, and comity underlying our new rule jurisprudence may be undermined to an equal degree by the invocation of a rule that was not dictated by precedent as by the application of an old rule in a manner that was not dictated by precedent." *Stringer* v. *Black*, 503 U. S. 222, 228 (1992). In this case, it is clear that "granting the relief sought would create a new rule because the prior decision is applied in a novel setting, thereby extending the precedent." *Ibid.* In light of *Beheler* and *Mathiason*, the State's judgment was, at the very least, reasonable. And "*Teague* insulates on habeas review the state courts' '"reasonable, good-faith interpretations of existing precedents."'" *Wright* v. *West*, 505 U. S. 277, 292, n. 8 (1992) (opinion of THOMAS, J.) (quoting *Sawyer* v. *Smith*, 497 U. S. 227, 234 (1990), quoting in turn *Butler* v. *McKellar*, *supra*, at 414).

LOUISIANA *v.* MISSISSIPPI ET AL.

ON BILL OF COMPLAINT

No. 121, Orig. Decided October 31, 1995—Decree entered December 4, 1995

Decree entered.

Opinion reported: *Ante*, p. 22.

DECREE

This cause having come on to be heard on the Report of the Special Master heretofore appointed by the Court, and the exceptions filed thereto, and having been argued by counsel for the several parties, and this Court having stated its conclusions in its opinion announced on October 31, 1995, *ante*, p. 22, and having considered the positions of the respective parties as to the terms of the decree, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. The boundary between the State of Louisiana and the State of Mississippi along the Mississippi River between North Latitude 32° 49′ 25″ and North Latitude 32° 44′ lies along the line described as follows:

> Beginning at Pt. 1 at North Latitude 32° 49′ 25″ and West Longitude 91° 09′ 27″; thence to Pt. 2, Latitude 32° 49′ and Longitude 91° 09′ 34″; thence to Pt. 3, Latitude 32° 49′ 47″ and Longitude 91° 09′ 37″; thence to Pt. 4, Latitude 32° 48′ 30″ and Longitude 91° 09′ 39″; thence to Pt. 5, Latitude 32° 48′ and Longitude 91° 09′ 47″; thence to Pt. 6, Latitude 32° 47′ 18″ and Longitude 91° 09′ 51″; thence to Pt. 7, Latitude 32° 47′ 6″ and Longitude 91° 09′ 54″; thence to Pt. 8, Latitude 32° 47′ and Longitude 91° 09′ 59″; thence to Pt. 9, Latitude 32° 46′ 50″ and Longitude 91° 10′ 7″; thence to Pt. 10, Latitude 32° 46′ 35″ and Longitude 91° 10′ 14″; thence to Pt. 11, Latitude 32° 46′ 20″ and Longitude 91° 10′ 16″; thence

to Pt. 12, Latitude 32° 46′ and Longitude 91° 10′ 18″; thence to Pt. 13, Latitude 32° 45′ 45″ and Longitude 91° 10′ 20″; thence to Pt. 14, Latitude 32° 45′ 30″ and Longitude 91° 10′ 18″; thence to Pt. 15, Latitude 32° 45′ 15″ and Longitude 91° 10′ 12″; thence to Pt. 16, Latitude 32° 45′ and Longitude 91° 10′ 01″; thence to Pt. 17, Latitude 32° 44′ 45″ and Longitude 91° 09′ 49″; thence to Pt. 18, Latitude 32° 44′ 30″ and Longitude 91° 09′ 38″; thence to Pt. 19, Latitude 32° 44′ 23″ and Longitude 91° 09′ 30″; thence to Pt. 20, Latitude 32° 44′ 15″ and Longitude 91° 09′ 18″; thence to Pt. 21, Latitude 32° 44′ 07″ and Longitude 91° 09′; thence to Pt. 22, Latitude 32° 44′ and Longitude 91° 08′ 44″.

2. The State of Louisiana's prayer that the claim of title by defendants Julia Donelson Houston, et al., in and to the lands and water bottoms lying between the Mississippi River on the east and the Louisiana-Mississippi boundary line as fixed in the preceding paragraph on the west be canceled and forever held for naught is DENIED.

3. The Court retains jurisdiction to entertain such further proceedings, enter such orders and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree or to effectuate the rights of the parties in the premises.

Syllabus

THINGS REMEMBERED, INC. *v.* PETRARCA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 94–1530. Argued October 2, 1995—Decided December 5, 1995

Respondent commenced this action in Ohio state court to collect rent allegedly owed by Child World, Inc., under two commercial leases and to enforce Cole National Corporation's guarantee of Child World's performance under the leases. After Child World filed a Chapter 11 bankruptcy petition, Cole's successor in interest, petitioner here, removed the action to federal court under the bankruptcy removal statute, 28 U. S. C. § 1452(a), and the general federal removal statute, § 1441(a). The Bankruptcy Court held that the removal was timely and proper, and that it had jurisdiction. The District Court reversed and, in effect, remanded the case to state court, holding that the removal was untimely under §§ 1441(a) and 1452(a) and that the Bankruptcy Court lacked jurisdiction. The Sixth Circuit dismissed petitioner's appeal for lack of jurisdiction, holding that §§ 1447(d) and 1452(b) barred appellate review of the District Court's remand order.

Held: If an order remands a removed bankruptcy case to state court because of a timely raised defect in removal procedure or lack of subject-matter jurisdiction, a court of appeals lacks jurisdiction to review the order under § 1447(d). That section, a provision of the general removal statute, bars appellate review of any "order remanding a case to the State court from which it was removed." Under *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336, 345–346, § 1447(d) must be read *in pari materia* with § 1447(c), so that only remands based on the grounds recognized by § 1447(c), *i. e.*, a timely raised defect in removal procedure or lack of subject-matter jurisdiction, are immune from review under § 1447(d). Section 1447(d) bars review here, since the District Court's order remanded the case to "the State court from which it was removed," and untimely removal is precisely the type of removal defect contemplated by § 1447(c). The same conclusion pertains regardless of whether the case was removed under § 1441(a) or § 1452(a). Section 1447(d) applies "not only to remand[s] . . . under [the general removal statute], but to orders of remand made in cases removed under *any other statutes.*" *United States* v. *Rice*, 327 U. S. 742, 752 (emphasis added). Moreover, there is no indication that Congress intended § 1452 to be the exclusive provision governing removals and remands in bankruptcy or to exclude bankruptcy cases from § 1447(d)'s coverage. Al-

though § 1452(b) expressly precludes review of certain remand decisions in bankruptcy cases, there is no reason §§ 1447(d) and 1452 cannot comfortably coexist in the bankruptcy context. The court must, therefore, give effect to both. Pp. 127–129.

65 F. 3d 169, affirmed.

THOMAS, J., delivered the opinion for a unanimous Court. KENNEDY, J., filed a concurring opinion, in which GINSBURG, J., joined, *post*, p. 129. GINSBURG, J., filed a concurring opinion, in which STEVENS, J., joined, *post*, p. 131.

Steven D. Cundra argued the cause for petitioner. With him on the briefs were *Patricia L. Taylor*, *Dean D. Gamin*, and *Mark A. Gamin*.

John C. Weisensell argued the cause for respondent. With him on the brief were *Andrew R. Duff* and *Jack Morrison, Jr.**

JUSTICE THOMAS delivered the opinion of the Court.

We decide in this case whether a federal court of appeals may review a district court order remanding a bankruptcy case to state court on grounds of untimely removal.

I

Respondent commenced this action in March 1992 by filing a four-count complaint against Child World, Inc., and Cole National Corporation in the Court of Common Pleas in Summit County, Ohio. The state action charged Child World with failure to pay rent under two commercial leases. The complaint also sought to enforce Cole's guarantee of Child World's performance under the leases. Petitioner is Cole's successor in interest.

On May 6, 1992, Child World filed a Chapter 11 petition in the United States Bankruptcy Court for the Southern Dis-

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**G. Eric Brunstad, Jr.*, filed a brief for the Connecticut Bar Association, Commercial Law and Bankruptcy Section, as *amicus curiae* urging affirmance.

trict of New York. On September 25, 1992, petitioner filed notices of removal in both the United States District and Bankruptcy Courts for the Northern District of Ohio. Petitioner based its removal on the bankruptcy removal statute, 28 U. S. C. § 1452(a),[1] as well as the general federal removal statute, 28 U. S. C. § 1441(a). Petitioner also filed a motion in the District Court to transfer venue to the Bankruptcy Court in the Southern District of New York, so that respondent's guaranty claims could be resolved in the same forum as the underlying lease claims against Child World. Respondent countered by filing motions to remand in the District Court on October 23, 1992, and in the Bankruptcy Court on November 25, 1992.

The District Court consolidated all proceedings in the Bankruptcy Court on March 25, 1993. The Bankruptcy Court held that petitioner's removal was untimely under 28 U. S. C. § 1452(a) and Federal Rule of Bankruptcy Procedure 9027 but that the action had been timely removed under 28 U. S. C. §§ 1441 and 1446. The court concluded that removal was proper and that it had jurisdiction over the removed case. The court then granted petitioner's motion to transfer venue to the Bankruptcy Court in the Southern District of New York.

Respondent appealed to the District Court in the Northern District of Ohio. The District Court found removal under both §§ 1441(a) and 1452(a) to be untimely and held that the Bankruptcy Court lacked jurisdiction over the case.

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[1] Section 1452 provides:

"(a) A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

"(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals . . . or by the Supreme Court . . . ."

The District Court reversed the judgment of the Bankruptcy Court and remanded to that court for further proceedings consistent with the District Court's opinion.[2]

Petitioner appealed the District Court's order to the Court of Appeals for the Sixth Circuit. In an unpublished disposition, the Sixth Circuit held that §§ 1447(d) and 1452(b) barred appellate review of the District Court's remand order. The Court of Appeals then dismissed the appeal for lack of jurisdiction. Judgt. order reported at 65 F. 3d 169 (1994). We granted certiorari, 514 U. S. 1095 (1995), and now affirm.

II

Congress has placed broad restrictions on the power of federal appellate courts to review district court orders remanding removed cases to state court. The general statutory provision governing the reviewability of remand orders is 28 U. S. C. § 1447(d). That section provides:

> "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise."

As we explained in *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336 (1976), § 1447(d) must be read *in pari materia* with § 1447(c), so that only remands based on grounds specified in § 1447(c) are immune from review under § 1447(d). *Id.*, at 345–346. As long as a district court's remand is based on a timely raised defect in removal procedure or on lack of subject-matter jurisdiction—the grounds for remand recognized by § 1447(c)—a court of appeals lacks juris-

[2] The District Court's order left the Bankruptcy Court with no option but to remand the case to state court. The parties and the Court of Appeals for the Sixth Circuit are in agreement that the District Court's order in this case was equivalent to a remand to state court.

diction to entertain an appeal of the remand order under § 1447(d).

Section 1447(d) bars appellate review of the remand order in this case. As noted, § 1447(d) precludes appellate review of any order "remanding a case to the State court from which it was removed." The parties do not dispute that the District Court's order remanded this case to the Ohio state court from which it came. There is also no dispute that the District Court remanded this case on grounds of untimely removal, precisely the type of removal defect contemplated by § 1447(c).[3] Section 1447(d) thus compels the conclusion that the District Court's order is "not reviewable on appeal or otherwise." See *Gravitt* v. *Southwestern Bell Telephone Co.*, 430 U. S. 723 (1977) *(per curiam)*.

We reach the same conclusion regardless of whether removal was effected pursuant to § 1441(a) or § 1452(a). Section 1447(d) applies "not only to remand orders made in suits removed under [the general removal statute], but to orders of remand made in cases removed under *any other statutes*, as well." *United States* v. *Rice*, 327 U. S. 742, 752 (1946) (emphasis added).[4] Absent a clear statutory command to the contrary, we assume that Congress is "aware of the universality of th[e] practice" of denying appellate review of remand orders when Congress creates a new ground for removal. *Ibid.*

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[3] Section 1447(c) requires that a motion to remand for a defect in removal procedure be filed within 30 days of removal. Petitioner removed this case to federal court on September 25, 1992. Respondent filed motions to remand in the District Court on October 23, 1992, and in the Bankruptcy Court on November 25, 1992. Respondent's motion to remand filed in the District Court was sufficient to bring this case within the coverage of § 1447(c).

[4] *Rice* interpreted the predecessor statute to § 1447(d). The current version of § 1447(d) is a recodification of the provision reviewed in *Rice* and is "intended to restate the prior law with respect to remand orders and their reviewability." *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336, 349–350 (1976).

There is no express indication in § 1452 that Congress intended that statute to be the exclusive provision governing removals and remands in bankruptcy. Nor is there any reason to infer from § 1447(d) that Congress intended to exclude bankruptcy cases from its coverage. The fact that § 1452 contains its own provision governing certain types of remands in bankruptcy, see § 1452(b) (authorizing remand on "any equitable ground" and precluding appellate review of any decision to remand or not to remand on this basis), does not change our conclusion. There is no reason §§ 1447(d) and 1452 cannot comfortably coexist in the bankruptcy context. We must, therefore, give effect to both. *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253 (1992).

If an order remands a bankruptcy case to state court because of a timely raised defect in removal procedure or lack of subject-matter jurisdiction, then a court of appeals lacks jurisdiction to review that order under § 1447(d), regardless of whether the case was removed under § 1441(a) or § 1452(a). The remand at issue falls squarely within § 1447(d), and the order is not reviewable on appeal.

The judgment of the Court of Appeals for the Sixth Circuit is affirmed.

It is so ordered.

JUSTICE KENNEDY, with whom JUSTICE GINSBURG joins, concurring.

I join the Court's opinion but write to point out that *Thermtron Products, Inc.* v. *Hermansdorfer*, 423 U. S. 336 (1976), has itself been limited by our later decision in *Carnegie-Mellon Univ.* v. *Cohill*, 484 U. S. 343 (1988). As I understand the opinion we issue today, our reliance on *Thermtron* to hold that 28 U. S. C. § 1447(d) prohibits appellate review of this remand pursuant to § 1447(c) (whether or not removal was effected pursuant to § 1441(a) or § 1452(a)) is not intended to bear upon the reviewability of *Cohill* orders.

In *Thermtron*, we held that a District Court had exceeded its authority when it remanded a case on grounds not permitted by § 1447(c). 423 U. S., at 345. We further held that the prohibition of appellate review in § 1447(d) does not bar review of orders outside the authority of subsection (c), reasoning that subsections (c) and (d) were to be given a parallel construction. *Id.*, at 345–350. We observed that a remand order other than the orders specified in subsection (c) had "no warrant in the law" and could be reviewed by mandamus. *Id.*, at 353.

In *Cohill*, *supra*, we qualified the first holding of *Thermtron*. We held that, notwithstanding lack of express statutory authorization, a district court may remand to state court a case in which the sole federal claim had been eliminated and only pendent state-law claims remained. We did not find it necessary to decide whether subsection (d) would bar review of a remand on these grounds, for we affirmed the denial of mandamus by the Court of Appeals. 484 U. S., at 357.

Despite the broad sweep of § 1447(d), which provides that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise," various Courts of Appeals have relied on *Thermtron* to hold that § 1447(d) bars appellate review of § 1447(c) remands but not remands ordered under *Cohill*. See, *e. g.*, *Bogle* v. *Phillips Petroleum Co.*, 24 F. 3d 758, 761 (CA5 1994); *In re Prairie Island Dakota Sioux*, 21 F. 3d 302, 304 (CA8 1994) *(per curiam)*; *Nutter* v. *Monongahela Power Co.*, 4 F. 3d 319, 322–323 (CA4 1993) (dicta); *In re Glass, Molders, Pottery, Plastics & Allied Workers Int'l Union, Local No. 173*, 983 F. 2d 725, 727 (CA6 1993); *Rothner* v. *Chicago*, 879 F. 2d 1402, 1406 (CA7 1989); cf. *In re Amoco Petroleum Additives Co.*, 964 F. 2d 706, 708 (CA7 1992) ("*Thermtron* holds that § 1447(d) does not mean what it says . . ."). The issues raised by those decisions are not before us.

JUSTICE GINSBURG, with whom JUSTICE STEVENS joins, concurring.

Congress, as I read its measures, twice made the remand order here at issue "not reviewable by appeal." Congress did so first in the prescription generally governing orders "remanding a case to the State court from which it was removed," 28 U. S. C. § 1447(d); Congress did so again in § 1452(b) when it authorized the remand of claims related to bankruptcy cases "on any equitable ground."

Section 1452(b) is most sensibly read largely to supplement, and generally not to displace, the rules governing cases removed from state courts set out in 28 U. S. C. § 1447. Section 1447(d) encompassingly prescribes that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, [excepting only orders remanding civil rights cases removed pursuant to 28 U. S. C. § 1443]." The Court persuasively explains why § 1452 does not negate the application of § 1447(d) to bankruptcy cases. Accordingly, the Court holds § 1447(d) dispositive, and I agree with that conclusion. But I am also convinced that § 1452(b) independently warrants the judgment that remand orders in bankruptcy cases are not reviewable. I write separately to state my reasons for that conviction.

Section 1452(b) broadly provides for district court remand of claims related to bankruptcy cases "on any equitable ground," and declares that the remanding order is "not reviewable by appeal or otherwise."[1] Congress, when it

[1] This case concerns, and I address in this opinion, only orders *remanding* claims "related to" bankruptcy cases. Section 1452(b) also encompasses decisions "to not remand" claims related to bankruptcy cases. The § 1452(b) coverage of decisions "to not remand" resembles a prescription in 28 U. S. C. § 1334, the root jurisdictional provision governing "Bankruptcy cases and proceedings." Section 1334(c)(2) renders unreviewable district court decisions "to abstain or not to abstain" from adjudi-

added § 1452 to the Judicial Code chapter on removal of cases from state courts—a chapter now comprising 28 U. S. C. §§ 1441–1452—meant to enlarge, not to rein in, federal trial court removal/remand authority for claims related to bankruptcy cases. The drafters, it bears emphasis, expressly contemplated that remand orders for claims related to bankruptcy cases "would not be appealable"; in particular, they reported that bankruptcy forum remands would be unreviewable "*in the same manner* that an order of the United States district court remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." H. R. Rep. No. 95–595, p. 51 (1977) (emphasis added).[2]

The lawmakers chose the capacious words "any equitable ground" with no hint whatever that they meant by their word choice to recall premerger distinctions between law

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cating state-law claims merely "related to" a bankruptcy case, *i. e.*, claims that do not independently qualify for federal-court jurisdiction.

Of course, every federal court, whether trial or appellate, is obliged to notice want of subject-matter jurisdiction on its own motion. See, *e. g., Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 382 (1884). An interlocutory decision "to not remand," therefore, although not *per se* reviewable, would leave open for eventual appellate consideration—also and earlier for district court reconsideration—any question of the court's subject-matter jurisdiction. See, *e. g., Sykes* v. *Texas Air Corp.*, 834 F. 2d 488, 492, n. 16 (CA5 1987) ("When the district court decides to *retain* a case in the face of arguments that it lacks jurisdiction, the decision itself is technically unreviewable; but of course the appellate court reviewing any other aspect of the case must remand for dismissal if the refusal to remand was wrong, *i. e.*, if there is no federal jurisdiction over the case.") (emphasis in original).

[2] After the Court held inconsonant with Article III the Bankruptcy Act's broad grant of jurisdiction to bankruptcy judges, see *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U. S. 50, 87 (1982), Congress transferred supervisory jurisdiction over bankruptcy cases to Article III courts and retained for the district courts the broad removal/remand authority the Act initially gave to bankruptcy courts. See Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98–353, 98 Stat. 333.

and equity, and thereby to render reviewable bankruptcy case remand orders based on "law." In legal systems that never separated pleadings and procedure along law/equity lines, and not infrequently in our own long-merged system, "equitable" signals that which is reasonable, fair, or appropriate. Dictionary definitions of "equitable" notably include among appropriate meanings: "just and impartial," American Heritage Dictionary 622 (3d ed. 1992); also "dealing fairly and equally with all concerned," Webster's Ninth New Collegiate Dictionary 421 (1983). As Circuit Judge Easterbrook observed:

> "[T]he distinction between law and equity was abolished long ago in federal cases. Nothing in the history of the bankruptcy code suggests that Congress wanted to resuscitate it. Courts must separate 'legal' from 'equitable' grounds in 1789 on command of the seventh amendment. This task has little but the sanction of history to recommend it and is possible only because law versus equity was an intelligible line in the eighteenth century. In 1978, when Congress enacted the predecessor to § 1452, there was no law-equity distinction. 'Equitable' in § 1452(b) makes more sense if it means 'appropriate.'" *Hernandez* v. *Brakegate, Ltd.*, 942 F. 2d 1223, 1226 (CA7 1991).

Cf., *e. g.*, *Hilton Davis Chemical Co.* v. *Warner-Jenkinson Co.*, 62 F. 3d 1512, 1521 (CA Fed. 1995) ("The term 'equitable' can have many meanings. . . . [I]n doctrine of equivalents cases, this court's allusions to equity invoke equity in its broadest sense—equity as general fairness."); *United States* v. *BCCI Holdings (Luxembourg), S. A.*, 46 F. 3d 1185, 1189, 1190 (CADC 1995) (rejecting the argument that Congress used the expression "*legal* right, title, or interest" in 18 U. S. C. § 1963(*l*)(6)(A) "to draw the ancient, but largely ignored, distinction between technically legal and techni-

cally equitable claims in forfeiture challenges") (emphasis in original).

It seems to me entirely appropriate—and, in that sense, equitable—to remand a case for failure promptly to remove. Indeed, counsel for petitioner recognized the potential for manipulation inherent in his proffered distinction between statutory time limits ("legal" limits) on the one hand and, on the other, court-made determinations that a procedural move is untimely because pursued without due expedition ("equitable" assessments). At oral argument, the following exchange occurred:

> "QUESTION: Suppose the judge in this case said, I'm not 100 percent sure about strict time limit, but I think you should have come here sooner, so for equitable reasons I'm remanding this because I think you dawdled—an equitable notion like laches . . .—that would not be reviewable, right?
>
> "MR. CUNDRA: That is correct.
>
> "QUESTION: So it's the judge's label, what he wants to put on it. He can make it immune from review if he says, laches.
>
> "MR. CUNDRA: Yes.
>
> "QUESTION: But it's reviewable if he says, time bar under the statute.
>
> "MR. CUNDRA: Yes." Tr. of Oral Arg. 15–16.

As Circuit Judge Gee remarked in relation to this very issue, it "make[s] little sense" to rest reviewability *vel non* on the tag the trial court elects to place on its ruling. *Sykes* v. *Texas Air Corp.*, 834 F. 2d 488, 492 (CA5 1987).

Interpreting § 1452(b) as fully in sync with § 1447(d) on the nonreviewability of remand orders, we stress, secures the uniform treatment of all remands, regardless of the party initiating the removal or the court from which the case is removed. Cf. *Pacor, Inc.* v. *Higgins*, 743 F. 2d 984, 991–992

(CA3 1984) (refusing to apply § 1447(d) in bankruptcy cases because, *inter alia*, removals under §§ 1441–1447 may be initiated only by defendants and are from state courts only, while § 1452 authorizes removals by "a party" and applies to cases originally filed in federal as well as state tribunals). A restrictive definition of what is "equitable" could invite wasteful controversy over the reviewability of bankruptcy case remand orders that are not reached by § 1447 and rest on grounds a common-law pleader might type "legal." It would show little respect for the legislature were courts to suppose that the lawmakers meant to enact an irrational scheme. Cf. *John Hancock Mut. Life Ins. Co.* v. *Harris Trust and Sav. Bank*, 510 U. S. 86, 94–95 (1993) (Court's examination of statutory language is "guided not by a single sentence or member of a sentence, but look[s] to the provisions of the whole law, and to its object and policy.") (internal quotation marks omitted) (quoting *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U. S. 41, 51 (1987)); *Deal* v. *United States*, 508 U. S. 129, 132 (1993) (It is a "fundamental principle of statutory construction (and, indeed, of language itself) that the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.").

Moreover, even if jurisdictional and procedural defects were excluded from the "equitable ground" category, that would not force a construction of § 1452(b) calling for different results depending on the party initiating the removal or the court from which a claim is removed. The phrase "any equitable ground" in § 1452(b) sensibly can be read to relate not to the basis for the district court's refusal to entertain a case (as my discussion up to now has assumed), but rather to the basis for *remanding*. Ordinarily, a district court unable to hear a claim, because of lack of jurisdiction or some other legal hindrance, has no choice but to dismiss. Section 1452(b), under the construction advanced in this paragraph, provides an alternative to dismissal (as well as an alternative

to proceeding with the case though all the legal requirements are met), by authorizing remands as fairness warrants, *i. e.*, when a remand would be "equitable."

In sum, a "strong congressional policy against review of remand orders," *Sykes*, 834 F. 2d, at 490, underlies §§ 1447(d) and 1452(b). Courts serve the legislature's purpose best by reading § 1452(b) to make sense and avoid nonsense, and to fit harmoniously within a set of provisions composing a coherent chapter of the Judicial Procedure part of the United States Code. Cf. *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 371 (1988) (statutory term "that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme," for example, when "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law") (citations omitted). Thus the Sixth Circuit, I conclude, correctly ruled that neither § 1452(b) nor § 1447(d) permits the assertion of appellate jurisdiction in this case.

Syllabus

BAILEY *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94–7448. Argued October 30, 1995—Decided December 6, 1995*

Petitioners Bailey and Robinson were each convicted of federal drug offenses and of violating 18 U. S. C. § 924(c)(1), which, in relevant part, imposes a prison term upon a person who "during and in relation to any . . . drug trafficking crime . . . uses or carries a firearm." Bailey's § 924(c)(1) conviction was based on a loaded pistol that the police found inside a bag in his locked car trunk after they arrested him for possession of cocaine revealed by a search of the car's passenger compartment. The unloaded, holstered firearm that provided the basis for Robinson's § 924(c)(1) conviction was found locked in a trunk in her bedroom closet after she was arrested for a number of drug-related offenses. There was no evidence in either case that the defendant actively employed the firearm in any way. In consolidating the cases and affirming the convictions, the Court of Appeals sitting en banc applied an "accessibility and proximity" test to determine "use" within § 924(c)(1)'s meaning, holding, in both cases, that the gun was sufficiently accessible and proximate to the drugs or drug proceeds that the jury could properly infer that the defendant had placed the gun in order to further the drug offenses or to protect the possession of the drugs.

Held:

1. Section 924(c)(1) requires evidence sufficient to show an *active employment* of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate offense. Evidence of the proximity and accessibility of the firearm to drugs or drug proceeds is not alone sufficient to support a conviction for "use" under the statute. Pp. 142–151.

(a) Although the Court of Appeals correctly ruled that "use" must connote more than mere possession of a firearm by a person who commits a drug offense, the court's accessibility and proximity standard renders "use" virtually synonymous with "possession" and makes any role for the statutory word "carries" superfluous. Section 924(c)(1)'s language instead indicates that Congress intended "use" in the active sense of "to avail oneself of." *Smith* v. *United States*, 508 U. S. 223, 228–229. This reading receives further support from § 924(c)(1)'s context within

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*Together with No. 94–7492, *Robinson* v. *United States*, also on certiorari to the same court.

the statutory scheme, and neither the section's amendment history nor *Smith*, *supra*, at 236, is to the contrary. Thus, to sustain a conviction under the "use" prong of § 924(c)(1), the Government must show that the defendant actively employed the firearm during and in relation to the predicate crime. Under this reading, "use" includes the acts of brandishing, displaying, bartering, striking with, and firing or attempting to fire a firearm, as well as the making of a reference to a firearm in a defendant's possession. It does not include mere placement of a firearm for protection at or near the site of a drug crime or its proceeds or paraphernalia, nor the nearby concealment of a gun to be at the ready for an imminent confrontation. Pp. 142–150.

(b) The evidence was insufficient to support either Bailey's or Robinson's § 924(c)(1) conviction for "use" under the active-employment reading of that word. Pp. 150–151.

2. However, because the Court of Appeals did not consider liability under the "carry" prong of § 924(c)(1) as a basis for upholding these convictions, the cases must be remanded. P. 151.

36 F. 3d 106, reversed and remanded.

O'CONNOR, J., delivered the opinion for a unanimous Court.

Alan E. Untereiner argued the cause for petitioners in both cases. With him on the briefs were *David B. Smith* and *Roy T. Englert, Jr.*

Deputy Solicitor General Dreeben argued the cause for the United States in both cases. With him on the brief were *Solicitor General Days*, *Assistant Attorney General Harris*, *James A. Feldman*, and *John F. De Pue.*†

JUSTICE O'CONNOR delivered the opinion of the Court.

These consolidated petitions each challenge a conviction under 18 U. S. C. § 924(c)(1). In relevant part, that section imposes a 5-year minimum term of imprisonment upon a person who "during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm." We are asked to decide whether evidence of the proximity and accessibility of a firearm to drugs or drug proceeds is alone

†*Edward H. Sisson* and *Daniel A. Rezneck* filed a brief for James Doe as *amicus curiae* urging reversal.

sufficient to support a conviction for "use" of a firearm during and in relation to a drug trafficking offense under 18 U. S. C. § 924(c)(1).

I

In May 1989, petitioner Roland Bailey was stopped by police officers after they noticed that his car lacked a front license plate and an inspection sticker. When Bailey failed to produce a driver's license, the officers ordered him out of the car. As he stepped out, the officers saw Bailey push something between the seat and the front console. A search of the passenger compartment revealed one round of ammunition and 27 plastic bags containing a total of 30 grams of cocaine. After arresting Bailey, the officers searched the trunk of his car where they found, among a number of items, a large amount of cash and a bag containing a loaded 9-mm. pistol.

Bailey was charged on several counts, including using and carrying a firearm in violation of 18 U. S. C. § 924(c)(1). A prosecution expert testified at trial that drug dealers frequently carry a firearm to protect their drugs and money as well as themselves. Bailey was convicted by the jury on all charges, and his sentence included a consecutive 60-month term of imprisonment on the § 924(c)(1) conviction.

The Court of Appeals for the District of Columbia Circuit rejected Bailey's claim that the evidence was insufficient to support his conviction under § 924(c)(1). *United States* v. *Bailey*, 995 F. 2d 1113 (CADC 1993). The court held that Bailey could be convicted for "using" a firearm during and in relation to a drug trafficking crime if the jury could reasonably infer that the gun facilitated Bailey's commission of a drug offense. *Id.*, at 1119. In Bailey's case, the court explained, the trier of fact could reasonably infer that Bailey had used the gun in the trunk to protect his drugs and drug proceeds and to facilitate sales. Judge Douglas H. Ginsburg, dissenting in part, argued that prior Circuit precedent required reversal of Bailey's conviction.

In June 1991, an undercover officer made a controlled buy of crack cocaine from petitioner Candisha Robinson. The officer observed Robinson retrieve the drugs from the bedroom of her one-bedroom apartment. After a second controlled buy, the police executed a search warrant of the apartment. Inside a locked trunk in the bedroom closet, the police found, among other things, an unloaded, holstered .22-caliber Derringer, papers and a tax return belonging to Robinson, 10.88 grams of crack cocaine, and a marked $20 bill from the first controlled buy.

Robinson was indicted on a number of counts, including using or carrying a firearm in violation of § 924(c)(1). A prosecution expert testified that the Derringer was a "second gun," *i. e.*, a type of gun a drug dealer might hide on his or her person for use until reaching a "real gun." The expert also testified that drug dealers generally use guns to protect themselves from other dealers, the police, and their own employees. Robinson was convicted on all counts, including the § 924(c)(1) count, for which she received a 60-month term of imprisonment. The District Court denied Robinson's motion for a judgment of acquittal with respect to the "using or carrying" conviction and ruled that the evidence was sufficient to establish a violation of § 924(c)(1).

A divided panel of the Court of Appeals reversed Robinson's conviction on the § 924(c)(1) count. *United States* v. *Robinson*, 997 F. 2d 884 (CADC 1993). The court determined, "[g]iven the way section 924(c)(1) is drafted, even if an individual intends to use a firearm in connection with a drug trafficking offense, the conduct of that individual is not reached by the statute unless the individual actually uses the firearm for that purpose." *Id.*, at 887. The court held that Robinson's possession of an unloaded .22-caliber Derringer in a locked trunk in a bedroom closet fell significantly short of the type of evidence the court had previously held necessary to establish actual use under § 924(c)(1). The mere proximity of the gun to the drugs was held insufficient to

support the conviction. Judge Henderson dissented, arguing, among other things, that the firearm facilitated Robinson's distribution of drugs because it protected Robinson and the drugs during sales.

In order to resolve the apparent inconsistencies in its decisions applying § 924(c)(1), the Court of Appeals for the District of Columbia Circuit consolidated the two cases and reheard them en banc. In a divided opinion, a majority of the court held that the evidence was sufficient to establish that each defendant had used a firearm in relation to a drug trafficking offense and affirmed the § 924(c)(1) conviction in each case. 36 F. 3d 106 (CADC 1994) (en banc).

The majority rejected a multifactor weighing approach to determine sufficiency of the evidence to support a § 924(c)(1) conviction. The District of Columbia Circuit had previously applied a nonexclusive set of factors, including: accessibility of the gun, its proximity to drugs, whether or not it was loaded, what type of weapon was involved, and whether expert testimony supported the Government's theory of "use." The majority explained that this approach invited the reviewing court to reweigh the evidence and make its own finding with respect to an ultimate fact, a function properly left to the jury; had produced widely divergent and contradictory results; and was out of step with the broader definition of "use" employed by other Circuits.

The court replaced the multifactor test with an "accessibility and proximity" test. "[W]e hold that one uses a gun, i. e., avails oneself of a gun, and therefore violates [§ 924(c)(1)], whenever one puts or keeps the gun in a particular place from which one (or one's agent) can gain access to it if and when needed to facilitate a drug crime." *Id.*, at 115. The court applied this new standard and affirmed the convictions of both Bailey and Robinson. In both cases, the court determined that the gun was sufficiently accessible and proximate to the drugs or drug proceeds that the jury could properly infer that the defendant had placed the gun in order to fur-

ther the drug offenses or to protect the possession of the drugs.

Judge Wald, in dissent, argued that the court's previous multifactor test provided a better standard for appellate review of § 924(c)(1) convictions. Judge Williams, joined by Judges Silberman and Buckley, also dissented. He explained his understanding that "use" under § 924(c)(1) denoted active employment of the firearm "rather than possession with a contingent intent to use." *Id.*, at 121. "[B]y articulating a 'proximity' plus 'accessibility' test, however, the court has in effect diluted 'use' to mean simply possession with a floating intent to use." *Ibid.*

As the debate within the District of Columbia Circuit illustrates, § 924(c)(1) has been the source of much perplexity in the courts. The Circuits are in conflict both in the standards they have articulated, compare *United States* v. *Torres-Rodriguez*, 930 F. 2d 1375, 1385 (CA9 1991) (mere possession sufficient to satisfy § 924(c)), with *United States* v. *Castro-Lara*, 970 F. 2d 976, 983 (CA1 1992) (mere possession insufficient), cert. denied *sub nom. Sarraff* v. *United States*, 508 U. S. 962 (1993); and in the results they have reached, compare *United States* v. *Feliz-Cordero*, 859 F. 2d 250, 254 (CA2 1988) (presence of gun in dresser drawer in apartment with drugs, drug proceeds, and paraphernalia insufficient to meet § 924(c)(1)), with *United States* v. *McFadden*, 13 F. 3d 463, 465 (CA1 1994) (evidence of gun hidden under mattress with money, near drugs, was sufficient to show "use"), and *United States* v. *Hager*, 969 F. 2d 883, 889 (CA10) (gun in boots in living room near drugs was "used"), cert. denied, 506 U. S. 964 (1992). We granted certiorari to clarify the meaning of "use" under § 924(c)(1). 514 U. S. 1062 (1995).

II

Section 924(c)(1) requires the imposition of specified penalties if the defendant, "during and in relation to any crime of violence or drug trafficking crime . . . , uses or carries a

firearm." Petitioners argue that "use" signifies active employment of a firearm. The Government opposes that definition and defends the proximity and accessibility test adopted by the Court of Appeals. We agree with petitioners, and hold that § 924(c)(1) requires evidence sufficient to show an *active employment* of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate offense.

This action is not the first one in which the Court has grappled with the proper understanding of "use" in § 924(c)(1). In *Smith*, we faced the question whether the barter of a gun for drugs was a "use," and concluded that it was. *Smith* v. *United States*, 508 U. S. 223 (1993). As the debate in *Smith* illustrated, the word "use" poses some interpretational difficulties because of the different meanings attributable to it. Consider the paradoxical statement: "I *use* a gun to protect my house, but I've never had to *use* it." "Use" draws meaning from its context, and we will look not only to the word itself, but also to the statute and the sentencing scheme, to determine the meaning Congress intended.

We agree with the majority below that "use" must connote more than mere possession of a firearm by a person who commits a drug offense. See 36 F. 3d, at 109; accord, *United States* v. *Castro-Lara*, *supra*, at 983; *United States* v. *Theodoropoulos*, 866 F. 2d 587, 597–598 (CA3 1989); *United States* v. *Wilson*, 884 F. 2d 174, 177 (CA5 1989). Had Congress intended possession alone to trigger liability under § 924(c)(1), it easily could have so provided. This obvious conclusion is supported by the frequent use of the term "possess" in the gun-crime statutes to describe prohibited gun-related conduct. See, *e. g.*, §§ 922(g), 922(j), 922(k), 922(*o*)(1), 930(a), 930(b).

Where the Court of Appeals erred was not in its conclusion that "use" means more than mere possession, but in its standard for evaluating whether the involvement of a firearm amounted to something more than mere possession. Its

proximity and accessibility standard provides almost no limitation on the kind of possession that would be criminalized; in practice, nearly every possession of a firearm by a person engaged in drug trafficking would satisfy the standard, "thereby eras[ing] the line that the statutes, and the courts, have tried to draw." *United States* v. *McFadden*, *supra*, at 469 (Breyer, C. J., dissenting). Rather than requiring actual use, the District of Columbia Circuit would criminalize "simpl[e] possession with a floating intent to use." 36 F. 3d, at 121 (Williams, J., dissenting). The shortcomings of this test are succinctly explained in Judge Williams' dissent:

> "While the majority attempts to fine-tune the concept of facilitation (and thereby, use) through its twin guideposts of proximity and accessibility, the ultimate result is that possession amounts to 'use' because possession enhances the defendant's confidence. Had Congress intended that, all it need have mentioned is possession. In this regard, the majority's test is either so broad as to assure automatic affirmance of any jury conviction or, if not so broad, is unlikely to produce a clear guideline." *Id.*, at 124–125 (citations omitted).

An evidentiary standard for finding "use" that is satisfied in almost every case by evidence of mere possession does not adhere to the obvious congressional intent to require more than possession to trigger the statute's application.

This conclusion—that a conviction for "use" of a firearm under § 924(c)(1) requires more than a showing of mere possession—requires us to answer a more difficult question. What must the Government show, beyond mere possession, to establish "use" for the purposes of the statute? We conclude that the language, context, and history of § 924(c)(1) indicate that the Government must show active employment of the firearm.

We start, as we must, with the language of the statute. See *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S.

235, 241 (1989). The word "use" in the statute must be given its "ordinary or natural" meaning, a meaning variously defined as "[t]o convert to one's service," "to employ," "to avail oneself of," and "to carry out a purpose or action by means of." *Smith*, *supra*, at 228–229 (internal quotation marks omitted) (citing Webster's New International Dictionary of English Language 2806 (2d ed. 1949) and Black's Law Dictionary 1541 (6th ed. 1990)). These various definitions of "use" imply action and implementation. See also *McFadden*, 13 F. 3d, at 467 (Breyer, C. J., dissenting) ("[T]he ordinary meanings of the words 'use and 'carry' . . . connote activity beyond simple possession").

We consider not only the bare meaning of the word but also its placement and purpose in the statutory scheme. "'[T]he meaning of statutory language, plain or not, depends on context.'" *Brown* v. *Gardner*, 513 U. S. 115, 118 (1994) (citing *King* v. *St. Vincent's Hospital*, 502 U. S. 215, 221 (1991)). Looking past the word "use" itself, we read § 924(c)(1) with the assumption that Congress intended each of its terms to have meaning. "Judges should hesitate . . . to treat [as surplusage] statutory terms in any setting, and resistance should be heightened when the words describe an element of a criminal offense." *Ratzlaf* v. *United States*, 510 U. S. 135, 140–141 (1994). Here, Congress has specified two types of conduct with a firearm: "uses" or "carries."

Under the Government's reading of § 924(c)(1), "use" includes even the action of a defendant who puts a gun into place to protect drugs or to embolden himself. This reading is of such breadth that no role remains for "carry." The Government admits that the meanings of "use" and "carry" converge under its interpretation, but maintains that this overlap is a product of the particular history of § 924(c)(1). Therefore, the Government argues, the canon of construction that instructs that "a legislature is presumed to have used no superfluous words," *Platt* v. *Union Pacific R. Co.*, 99 U. S. 48, 58 (1879), is inapplicable. Brief for United States 24–25.

We disagree. Nothing here indicates that Congress, when it provided these two terms, intended that they be understood to be redundant.

We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning. While a broad reading of "use" undermines virtually any function for "carry," a more limited, active interpretation of "use" preserves a meaningful role for "carries" as an alternative basis for a charge. Under the interpretation we enunciate today, a firearm can be used without being carried, *e. g.*, when an offender has a gun on display during a transaction, or barters with a firearm without handling it; and a firearm can be carried without being used, *e. g.*, when an offender keeps a gun hidden in his clothing throughout a drug transaction.

This reading receives further support from the context of § 924(c)(1). As we observed in *Smith*, "using a firearm" should not have a "different meaning in § 924(c)(1) than it does in § 924(d)." 508 U. S., at 235. See also *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 371 (1988) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme"). Section 924(d)(1) provides for the forfeiture of any firearm that is "used" or "intended to be used" in certain crimes. In that provision, Congress recognized a distinction between firearms "used" in commission of a crime and those "intended to be used," and provided for forfeiture of a weapon even before it had been "used." In § 924(c)(1), however, liability attaches only to cases of actual use, not intended use, as when an offender places a firearm with the intent to use it later if necessary. The difference between the two provisions demonstrates that, had Congress meant to broaden application of the statute beyond actual "use," Congress could and would have so specified, as it did in § 924(d)(1).

The amendment history of § 924(c) casts further light on Congress' intended meaning. The original version, passed in 1968, read:

> "(c) Whoever—
>
> "(1) uses a firearm to commit any felony which may be prosecuted in a court of the United States, or
>
> "(2) carries a firearm unlawfully during the commission of any felony which may be prosecuted in a court of the United States,
>
> "shall be sentenced to a term of imprisonment for not less than one year nor more than 10 years." § 102, 82 Stat. 1224.

The phrase "uses a firearm to commit" indicates that Congress originally intended to reach the situation where the firearm was actively employed during commission of the crime. This original language would not have stretched so far as to cover a firearm that played no detectable role in the crime's commission. For example, a defendant who stored a gun in a nearby closet for retrieval in case the deal went sour would not have "use[d] a firearm to commit" a crime. This version also shows that "use" and "carry" were employed with distinctly different meanings.

Congress' 1984 amendment to § 924(c) altered the scope of predicate offenses from "any felony" to "any crime of violence," removed the "unlawfully" requirement, merged the "uses" and "carries" prongs, substituted "during and in relation to" the predicate crimes for the earlier provisions linking the firearm to the predicate crimes, and raised the minimum sentence to five years. § 1005(a), 98 Stat. 2138–2139. The Government argues that this amendment stripped "uses" and "carries" of the qualifications ("to commit" and "unlawfully during") that originally gave them distinct meanings, so that the terms should now be understood to overlap. Of course, in *Smith* we recognized that Con-

gress' subsequent amendments to § 924(c) employed "use" expansively, to cover both use as a weapon and use as an item of barter. See *Smith*, 508 U. S., at 236. But there is no evidence to indicate that Congress intended to expand the meaning of "use" so far as to swallow up any significance for "carry." If Congress had intended to deprive "use" of its active connotations, it could have simply substituted a more appropriate term—"possession"—to cover the conduct it wished to reach.

The Government nonetheless argues that our observation in *Smith* that "§ 924(c)(1)'s language sweeps broadly," 508 U. S., at 229, precludes limiting "use" to active employment. But our decision today is not inconsistent with *Smith*. Although there we declined to limit "use" to the meaning "use as a weapon," our interpretation of § 924(c)(1) nonetheless adhered to an active meaning of the term. In *Smith*, it was clear that the defendant had "used" the gun; the question was whether that particular use (bartering) came within the meaning of § 924(c)(1). *Smith* did not address the question we face today of what evidence is required to permit a jury to find that a firearm had been used at all.

To illustrate the activities that fall within the definition of "use" provided here, we briefly describe some of the activities that fall within "active employment" of a firearm, and those that do not.

The active-employment understanding of "use" certainly includes brandishing, displaying, bartering, striking with, and, most obviously, firing or attempting to fire a firearm. We note that this reading compels the conclusion that even an offender's reference to a firearm in his possession could satisfy § 924(c)(1). Thus, a reference to a firearm calculated to bring about a change in the circumstances of the predicate offense is a "use," just as the silent but obvious and forceful presence of a gun on a table can be a "use."

The example given above—"I *use* a gun to protect my house, but I've never had to *use* it"—shows that "use" takes

on different meanings depending on context. In the first phrase of the example, "use" refers to an ongoing, inactive function fulfilled by a firearm. It is this sense of "use" that underlies the Government's contention that "placement for protection"—*i. e.*, placement of a firearm to provide a sense of security or to embolden—constitutes a "use." It follows, according to this argument, that a gun placed in a closet is "used," because its mere presence emboldens or protects its owner. We disagree. Under this reading, mere possession of a firearm by a drug offender, at or near the site of a drug crime or its proceeds or paraphernalia, is a "use" by the offender, because its availability for intimidation, attack, or defense would always, presumably, embolden or comfort the offender. But the inert presence of a firearm, without more, is not enough to trigger § 924(c)(1). Perhaps the nonactive nature of this asserted "use" is clearer if a synonym is used: storage. A defendant cannot be charged under § 924(c)(1) merely for storing a weapon near drugs or drug proceeds. Storage of a firearm, without its more active employment, is not reasonably distinguishable from possession.

A possibly more difficult question arises where an offender conceals a gun nearby to be at the ready for an imminent confrontation. Cf. 36 F. 3d, at 119 (Wald, J., dissenting) (discussing distinction between firearm's accessibility to drugs or drug proceeds and its accessibility to defendant). Some might argue that the offender has "actively employed" the gun by hiding it where he can grab and use it if necessary. In our view, "use" cannot extend to encompass this action. If the gun is not disclosed or mentioned by the offender, it is not actively employed, and it is not "used." To conclude otherwise would distort the language of the statute as well as create an impossible line-drawing problem. How "at the ready" was the firearm? Within arm's reach? In the room? In the house? How long before the confrontation did he place it there? Five minutes or 24 hours? Placement for later active use does not constitute "use." An alternative

rationale for why "placement at the ready" is a "use"—that such placement is made with the intent to put the firearm to a future active use—also fails. As discussed above, § 924(d)(1) demonstrates that Congress knew how to draft a statute to reach a firearm that was "intended to be used." In § 924(c)(1), it chose not to include that term, but instead established the 5-year mandatory minimum only for those defendants who actually "use" the firearm.

While it is undeniable that the active-employment reading of "use" restricts the scope of § 924(c)(1), the Government often has other means available to charge offenders who mix guns and drugs. The "carry" prong of § 924(c)(1), for example, brings some offenders who would not satisfy the "use" prong within the reach of the statute. And Sentencing Guidelines § 2D1.1(b)(1) provides an enhancement for a person convicted of certain drug-trafficking offenses if a firearm was possessed during the offense. United States Sentencing Commission, Guidelines Manual § 2D1.1(b)(1) (Nov. 1994). But the word "use" in § 924(c)(1) cannot support the extended applications that prosecutors have sometimes placed on it, in order to penalize drug-trafficking offenders for firearms possession.

The test set forth by the Court of Appeals renders "use" virtually synonymous with "possession" and makes any role for "carry" superfluous. The language of § 924(c)(1), supported by its history and context, compels the conclusion that Congress intended "use" in the active sense of "to avail oneself of." To sustain a conviction under the "use" prong of § 924(c)(1), the Government must show that the defendant actively employed the firearm during and in relation to the predicate crime.

III

Having determined that "use" denotes active employment, we must conclude that the evidence was insufficient to support either Bailey's or Robinson's conviction for "use" under § 924(c)(1).

The police stopped Bailey for a traffic offense and arrested him after finding cocaine in the driver's compartment of his car. The police then found a firearm inside a bag in the locked car trunk. There was no evidence that Bailey actively employed the firearm in any way. In Robinson's case, the unloaded, holstered firearm that provided the basis for her § 924(c)(1) conviction was found locked in a footlocker in a bedroom closet. No evidence showed that Robinson had actively employed the firearm. We reverse both judgments.

Bailey and Robinson were each charged under both the "use" and "carry" prongs of § 924(c)(1). Because the Court of Appeals did not consider liability under the "carry" prong of § 924(c)(1) for Bailey or Robinson, we remand for consideration of that basis for upholding the convictions.

It is so ordered.

Syllabus

BROTHERHOOD OF LOCOMOTIVE ENGINEERS ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILROAD CO. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 94–1592. Argued October 30, 1995—Decided January 8, 1996

The Hours of Service Act (HSA), 49 U. S. C. § 21101 *et seq.*, limits the number of hours that train crew employees can remain on duty. At times a train cannot reach a crew change point within the allotted time, however, so the railroad must stop the train in order that a new crew can replace the first, or "outlawed," crew. Transportation of the new crew to the train and the outlawed crew back to the terminal is called "deadhead transportation." Under § 21103(b)(4), "[t]ime spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty." The latter time is commonly termed "limbo time." After the Federal Railroad Administration, which administers the HSA, announced that it would follow a Ninth Circuit ruling that the time spent waiting for deadhead transportation from a duty site is on-duty time, respondent railroads filed this suit seeking direct review. The Seventh Circuit, sitting en banc, rejected the Ninth Circuit's interpretation and held that time spent waiting for deadhead transportation from a duty site is limbo time.

Held: The HSA's text, structure, and purposes demonstrate Congress' intent that time spent waiting for deadhead transportation from a duty site should be limbo time. As a matter of common usage, § 21103(b)(4)'s phrase "time spent in deadhead transportation" can be read to include the time spent waiting for such transportation. That this is so is also established by the HSA's provisions classifying given periods as on duty or off duty. When those provisions are considered in light of the HSA's purpose of promoting train safety, they reveal that on-duty time typically includes those hours that contribute to an employee's fatigue during his 12-hour shift. Thus, time spent waiting for deadhead transportation to a duty site should be classified as on-duty time because, along with the time spent in the transportation itself, it contributes to employee fatigue during the work assignment. But time spent waiting for deadhead transportation away from a duty site does not cause the fatigue that implicates safety concerns and so, like the deadhead transportation which follows it, the waiting time must be deemed limbo time.

Finally, classification of the time at issue here as on-duty time would impose on railroads the very scheduling problems that Congress sought to avoid when it created limbo time as a compromise during the 1969 HSA amendment process. Petitioner unions' attempts to treat the time at issue as on-duty time under §§ 21103(b)(5), 21103(b)(1), and 21103(b)(3) are unpersuasive, as are the cases that they cite, all of which were decided before the 1969 amendments. Pp. 156–162.

44 F. 3d 437, affirmed.

KENNEDY, J., delivered the opinion for a unanimous Court.

Lawrence M. Mann argued the cause for petitioners. With him on the briefs were *Harold A. Ross* and *Clinton J. Miller III.*

Malcolm L. Stewart argued the cause for the federal respondents. With him on the brief were *Solicitor General Days, Assistant Attorney General Hunger, Deputy Solicitor General Kneedler, Leonard Schaitman, John F. Daly, Paul M. Geier,* and *Daniel Carey Smith. Ronald M. Johnson* argued the cause and filed a brief for respondents Atchison, Topeka and Santa Fe Railway Company et al.*

JUSTICE KENNEDY delivered the opinion of the Court.

We granted certiorari to resolve a division between two Courts of Appeals regarding the correct statutory classification, under the Hours of Service Act, 49 U. S. C. § 21101 *et seq.*, of the time that train employees spend waiting for transportation at the end of their shift.

I

Congress enacted the Hours of Service Act (HSA) in 1907. Hours of Service Act, ch. 2939, § 1, 34 Stat. 1415. The HSA's purpose is to promote railroad safety by limiting the number of hours a train crew may remain on duty and by requiring

**John H. Broadley, Donald B. Verrilli, Jr., Robert W. Blanchette,* and *James C. Schultz* filed a brief for the Association of American Railroads as *amicus curiae* urging affirmance.

railroads to provide crew members with a certain number of off-duty hours for rest between shifts. *Ibid.*; *Chicago & Alton R. Co.* v. *United States*, 247 U. S. 197, 199 (1918). In particular, the HSA provides that train employees may not remain on duty for more than 12 consecutive hours, and, having worked for that period, must be given at least 10 consecutive hours off duty. 49 U. S. C. § 21103(a).

To comply with the HSA, railroads must schedule operations and crew assignments with some precision, for if operations require the crew to be on duty for more than 12 hours, the railroads may incur substantial penalties. The Federal Railroad Administration (FRA) administers the HSA, and it is authorized to impose a fine of between $500 and $10,000 for each violation of the statute. § 21303(a)(2). For each crew member on duty longer than the statutory maximum there is a separate violation. *Missouri, K., & T. R. Co. of Tex.* v. *United States*, 231 U. S. 112, 118–119 (1913); 48 CFR pt. 228, App. A, p. 244 (1994). The statute provides certain exceptions to the rules in cases of emergency. 49 U. S. C. § 21103(c).

At times, of course, a train cannot reach the scheduled crew change point, or even a convenient change point, within the 12 hours. To avoid violating the HSA, the railroad must stop the train so that a new crew can replace the first crew, now called the "outlawed crew." Transportation of the new crew to the train and the outlawed crew back to the terminal is called "deadhead transportation." The HSA provides different treatment for the time spent in deadhead transportation, depending on whether the transportation is taking a replacement crew to the train or taking the outlawed crew from the train. The statute provides that time spent in deadhead transportation to a duty assignment is time on duty, while time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty. § 21103(b)(4). Time that is neither on duty nor off duty is referred to in the industry as

"limbo time." At oral argument, the Court was advised that train employees are paid for limbo time.

We thus know how to treat the time the employee spends in the deadhead vehicle. The issue is how to classify the time the outlawed crew spends waiting for the deadhead transportation to arrive. Petitioners, the Brotherhood of Locomotive Engineers and the United Transportation Union, claim the waiting time is on-duty time that counts against the 12-hour limit. Save for a short-lived period when it changed its policy to acquiesce in a decision of the Court of Appeals for the Ninth Circuit that we shall recount, the FRA for many years has taken the contrary position. In its view, so long as crew members are not required to perform duties for the railroad while they wait, time spent waiting for deadhead transportation from a duty site is to be treated in the same way as the time in the deadhead transportation itself—that is, as limbo time. 58 Fed. Reg. 18163, 18164 (1993). The railroads, who are respondents along with the Secretary of Transportation, agree with the FRA's position.

In 1990 petitioners brought suit in California and Oregon, challenging the FRA's position. On appeal, the Court of Appeals for the Ninth Circuit held that the time spent waiting for deadhead transportation from a duty site is time on duty. The court concluded that the time was so defined before Congress amended the HSA in 1969 and that the 1969 amendments disclose no intent to change that result. *United Transportation Union* v. *Skinner*, 975 F. 2d 1421, 1426–1428 (1992).

For the sake of uniformity, the FRA decided to apply the Ninth Circuit's interpretation of the HSA on a nationwide basis. It announced the policy change in an October 28, 1992, letter to Robert W. Blanchette, Vice President of the Association of American Railroads, App. 73, and later published notice in the Federal Register, 58 Fed. Reg. 18163 (1993). In response, nine major railroads instituted the

present action, seeking direct review in the United States Court of Appeals for the Seventh Circuit of the FRA's order changing its interpretation. A three-judge panel of the Seventh Circuit affirmed the FRA's order, see *Atchison, T. & S. F. R. Co.* v. *Peña*, 29 F. 3d 324 (1994), but that opinion was superseded when the Seventh Circuit took the case en banc, 44 F. 3d 437 (1994). The en banc court rejected the Ninth Circuit's interpretation and held that time spent waiting for deadhead transportation is limbo time.

Because of the importance of uniform nationwide application of the HSA's regulatory scheme, we granted certiorari. 515 U. S. 1141 (1995).

II

In determining how time spent waiting for deadhead transportation should be classified, we begin with the text and design of the statute. As first enacted, the HSA divided all time into two categories—on duty and off duty—but it did not define either term. Congress amended the HSA in 1969, reducing the number of permissible on-duty hours and providing some specific rules for determining if a given period of time should be considered on duty or off duty. These statutory provisions are the controlling guide in the case before us, and are as follows:

> "(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.
>
> "(2) Time the employee is engaged in or connected with the movement of a train is time on duty.
>
> "(3) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in or connected with the movement of a train is time on duty.
>
> "(4) Time spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead

transportation from a duty assignment to the place of final release is neither time on duty nor time off duty.

"(5) An interim period available for rest at a place other than a designated terminal is time on duty.

"(6) An interim period available for less than 4 hours rest at a designated terminal is time on duty.

"(7) An interim period available for at least 4 hours rest at a place with suitable facilities for food and lodging is not time on duty when the employee is prevented from getting to the employee's designated terminal by any of the following:

"(A) a casualty

"(B) a track obstruction

"(C) an act of God

"(D) a derailment or major equipment failure resulting from a cause that was unknown and unforeseeable to the railroad carrier or its officer or agent in charge of that employee when that employee left the designated terminal." 49 U. S. C. § 21103(b).

Although these provisions do not specify time spent waiting for deadhead transportation as a separate category, § 21103(b)(4) does classify the "time spent in deadhead transportation." That phrase, as a matter of common usage, can be read to include the time spent waiting for the deadhead transportation, but we need not confine our examination to those words alone. When we consider the question in light of the purpose of the HSA and all the quoted provisions, we conclude that the time spent waiting for deadhead transportation is of the same character as the time spent in the deadhead transportation itself.

The purpose of the HSA is to promote the safe operation of trains, and the statutory classification must be understood in accord with that objective. The statute, in effect, makes the determination that a train employee who remains on duty for more than 12 consecutive hours will be too fatigued to operate a train in a safe manner. In consequence, the

provisions delineate as on-duty time those hours which will contribute to an employee's fatigue during his or her work assignment. In some instances, the relationship between the time at issue and the employee's fatigue is apparent, for example, the command of § 21103(b)(2) that the "[t]ime the employee is engaged in or connected with the movement of a train is time on duty."

The classification of other time periods is not quite as straightforward, but we think still apparent from the statutory design. What if a train employee is permitted to take a lengthy break between periods of work? If the train employee is not working at all during this time, is it time off duty? The statute answers the question by reference to the likelihood of employee fatigue in the ensuing period of work without the mandated rest interval. The statute specifies that an "interim period available for less than 4 hours rest at a designated terminal," § 21103(b)(6), and an "interim period available for rest at a place other than a designated terminal," § 21103(b)(5), are to be considered on-duty hours. It follows from the statutory scheme that these rest periods are not sufficient to alleviate fatigue.

The treatment of deadhead transportation follows the same scheme. Section 21103(b)(4) provides that "[t]ime spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty." The distinction between transportation to a duty assignment and transportation from a duty assignment makes perfect sense, given the statute's purpose of promoting train safety. Time spent deadheading to a duty site contributes to the fatigue that a train employee is likely to have during the 12-hour shift. By defining the time spent deadheading to a duty assignment as on-duty time, Congress ensured that an employee will not operate a train more than 12 hours after reporting for duty. The time employees spend deadheading from the duty site does not

give rise to these safety concerns, for no matter how much time the employees must spend deadheading away from the duty site, they will still receive the requisite off-duty rest time once they reach the terminal and before beginning a new shift involving train operations.

The same reasoning applies to the time spent waiting for deadhead transportation. Time spent waiting for deadhead transportation to a duty site should be classified as on-duty time because, along with the time spent in the transportation itself, it contributes to employee fatigue during the work assignment. Time spent waiting for deadhead transportation away from a duty site does not cause the fatigue that implicates these safety concerns and so, like the deadhead transportation which the wait precedes, the waiting time must be deemed limbo time to effect the statutory design.

It is common ground, moreover, that at the beginning of a shift, the wait for transportation and the transportation itself are treated alike; that is, the time spent waiting for deadhead transportation after reporting for duty at the required hour and the time spent in the deadhead transportation itself are both on-duty time. A consistent interpretation of the statute requires that the parallelism between the wait and the transportation when the shift begins carry over to the wait and the transportation when it ends.

Finally, the concerns that surfaced during the 1969 amendment process lend additional support to our conclusion. As noted, before the 1969 amendments time under the HSA fell into one of two categories—on duty or off duty. The binary scheme created a problem, however. The hours spent deadheading from the duty site to the terminal counted as off-duty rest time, see *United States* v. *Great Northern R. Co.*, 285 F. 152, 153 (CA9 1922), and, as a consequence, employees often spent much of their off-duty time not resting, but deadheading to the terminal. S. Rep. No. 91–604, p. 7 (1969); H. R. Rep. No. 91–469, p. 7 (1969). The railroad unions responded to the problem during the amendment process by

advocating that all time spent deadheading be classified as time on duty, and the original bill proposed in the House so provided. *Ibid.* The railroad industry opposed the change, however, particularly with respect to time spent deadheading from the duty site because of the operating difficulties that would result. Hearings on H. R. 8449, H. R. 84, and H. R. 9515 before the House Committee on Interstate and Foreign Commerce, 91st Cong., 1st Sess., 134–135 (1969). If time spent deadheading from a duty site were to be on-duty time, railroads would have to calculate the approximate deadheading time and stop the train early enough to take account of that interval. Any miscalculation would lead to a violation of the HSA.

The enacted statute reflects a compromise in the treatment of deadhead transportation: on-duty time at the shift's beginning, limbo time at its end. The creation of limbo time solved the problem of the employee who was forced to spend much of his or her off-duty rest time in deadhead transportation, but it did so without imposing scheduling difficulties on the railroads. If we were now to classify the waiting time as on-duty, as petitioners request, we would impose on railroads the same scheduling problems that Congress sought to avoid.

Petitioners try to escape the force of the argument by attempting to fit the time at issue here within other HSA provisions. For instance, because an "interim period available for rest at a place other than a designated terminal is time on duty," 49 U. S. C. § 21103(b)(5), petitioners reason that all waiting time at a place other than a designated terminal must be time on duty. But, as we have said, interim periods available for rest occur, by definition, between periods of service for the railroad. Because the employee must return to work immediately after an interim rest period, Congress had to determine whether such a rest period would be sufficient to alleviate fatigue. Its conclusions on that score have no bearing when the time spent waiting for deadhead trans-

portation is followed not by renewed service but by the statutory off-duty rest time. Petitioners next argue that because the HSA provides that "[t]ime on duty begins when the employee reports for duty and ends when the employee is finally released from duty," § 21103(b)(1), time on duty must always continue until the employee reaches his designated terminal. But that cannot be, for the HSA is express in providing that deadhead transportation from a duty site is limbo time, § 21103(b)(4).

Petitioners also point to § 21103(b)(3), which classifies as on duty any "[t]ime spent performing any other service for the railroad carrier during the 24-hour period in which the employee is engaged in or connected with the movement of a train." They say that because employees may be required to perform services for the railroad while they wait for the deadhead transportation to arrive, waiting time must be considered time on duty pursuant to § 21103(b)(3). Petitioners' argument begs the question, however. If employees are required to perform services covered by § 21103(b)(3), the time is on-duty time by definition. The question presented here, however, is how to treat the time spent waiting for deadhead transportation when no additional services are required, and § 21103(b)(3) cannot answer that question.

Petitioners, like the Ninth Circuit in *United Transportation Union* v. *Skinner*, 975 F. 2d, at 1426, point to numerous cases, most of them decided during the early part of this century, that they believe support their interpretation of the statute. See *Missouri, K., & T. R. Co. of Tex.* v. *United States*, 231 U. S. 112 (1913); *Northern Pacific R. Co.* v. *United States*, 220 F. 108 (CA9 1915); *United States* v. *Southern Pacific Co.*, 245 F. 722 (CA9 1917); *United States* v. *Pennsylvania R. Co.*, 275 F. Supp. 345 (WD Pa. 1967); *United States* v. *Chicago, M. & P. S. R. Co.*, 195 F. 783 (WD Wash. 1912). We need not determine whether the Ninth Circuit's reading of these cases was the correct one, cf. *Atchison, T. & S. F. R. Co.* v. *Peña*, 44 F. 3d 437, 444 (CA7 1994) (opinion below)

(distinguishing the above cases because they addressed "the categorization of time spent by a railroad crew waiting for repairs to be made or for some other delay before resuming its duties of operating the train"), because they were all decided before Congress amended the HSA. Thus, even if the time at issue here had been treated as on-duty time before 1969, that conclusion would have no bearing on how the time should now be defined because the 1969 amendments addressed this question.

For these reasons, we reject petitioners' construction of the HSA. The text, structure, and purposes of the statute persuade us that Congress intended that time spent waiting for deadhead transportation from a duty site should be limbo time. The judgment of the Court of Appeals is affirmed.

It is so ordered.

Syllabus

LAWRENCE, GUARDIAN AND NEXT FRIEND ON BEHALF OF LAWRENCE, A MINOR *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 94–9323. Decided January 8, 1996

Petitioner Lawrence asserts an entitlement to Social Security benefits as the dependent unmarried minor child of a deceased insured individual. The Social Security Act (Act) requires that paternity be decided by state law. Lawrence acknowledges that the relevant North Carolina law appears to defeat her claim, but argues that its proof of paternity requirements are unconstitutional. The Fourth Circuit upheld the denial of her benefits, accepting the Government's argument that a state paternity law's constitutionality need not be considered before applying it to determine entitlement to Social Security benefits. Since Lawrence filed this certiorari petition, the Social Security Administration (SSA) has reexamined its position and concluded that the Act does require a determination whether a state intestacy statute is constitutional. Thus, the Solicitor General has invited the Court to grant certiorari, vacate the judgment below, and remand the case (GVR) for the Fourth Circuit to decide the case, or remand it to the Commissioner for reconsideration, in light of the new interpretation.

Held:

1. Insofar as Congress, through 28 U. S. C. §2106, appears to have conferred upon this Court a broad power to GVR, the Court has the power to remand to a lower federal court any case raising a federal issue which is properly before it in its appellate capacity. Over the past 50 years the GVR has become an integral part of this Court's practice. It has the virtues of conserving the Court's scarce resources, assisting the court below by flagging a particular issue that it does not appear to have fully considered, procuring the benefit of the lower court's insight before this Court rules on the merits, and alleviating the potential for unequal treatment inherent in this Court's inability to grant plenary review of all pending cases raising similar issues. Where intervening developments, or recent developments that the court below is unlikely to have considered, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given

the opportunity, and where it appears that a redetermination may determine the litigation's ultimate outcome, a GVR is potentially appropriate. Whether it is ultimately appropriate depends on a case's equities. All Members of the Court agree that a wide range of intervening developments may justify a GVR order but that the GVR power should be used sparingly. Thus, this Court has the power to issue a GVR order, and such an order is an appropriate exercise of the Court's discretionary certiorari jurisdiction.

2. Subject to the equities, the SSA's new interpretation of the Act makes a GVR order appropriate here. There is a reasonable probability that the Fourth Circuit would conclude that the timing of the agency's interpretation does not preclude the deference that it would otherwise receive, and that it may be outcome determinative in this case. The equities also favor a GVR. That disposition has the Government's express support. Since the Government has indicated its intention to apply the new interpretation to future cases nationwide, giving Lawrence a chance to benefit from it furthers fairness by treating her like other future benefits applicants. The general concern that a post-litigation interpretation may be the product of unfair or manipulative Government litigation strategies does not deprive Lawrence of the benefit of a favorable reinterpretation in these particular circumstances.

Certiorari granted; vacated and remanded.

PER CURIAM.

Under the Social Security Act, the unmarried minor "child" of a deceased individual who was insured under the Act may receive survivors' benefits if she was "dependent upon such individual" prior to his death. 49 Stat. 623, as amended, 42 U. S. C. § 402(d)(1)(C) (1988 ed.). In order to determine whether a claimant is, for these purposes, the "child" of the deceased, and, as such, eligible to receive benefits, the Commissioner of Social Security "shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which [the] insured individual . . . was domiciled at the time of his death." 42 U. S. C. § 416(h)(2)(A) (1988 ed.).

The petitioner in this case, Lawrence, asserts an entitlement to benefits under these provisions. In so doing, she acknowledges that the relevant state law, that of North Car-

olina, appears on its face to defeat her claim by imposing procedural requirements on proof of paternity (which it requires as a prerequisite for intestate succession) that she cannot meet. She contends, however, that these difficulties can be overcome in her case as they were in *Handley* v. *Schweiker*, 697 F. 2d 999 (1983). In that case, the Court of Appeals for the Eleventh Circuit held that state-law requirements of proof of paternity can only be applied against a claimant for benefits under § 416(h)(2)(A) insofar as they are constitutional, and that an Alabama law similar to the North Carolina law involved here was unconstitutional. In contrast, in the case before us, the Court of Appeals for the Fourth Circuit upheld the Social Security Administration's Appeals Council's denial of benefits to Lawrence. The Court of Appeals expressly adopted the rationale for rejecting her claim that the Government advanced in its brief to that court: that the constitutionality of a state paternity law need not be considered before applying it to determine entitlement to benefits under the federal statutory scheme. Lawrence petitioned for certiorari to review that decision.

In his response, the Solicitor General advises us that the "Social Security Administration has re-examined" the role of state paternity and intestacy laws in the federal benefits scheme, and now interprets the Social Security Act as "requir[ing] a determination, at least in some circumstances, of whether the state intestacy statute is constitutional." Brief for Respondent 8. He also correctly notes that the Act directs the Commissioner of Social Security—not, in the first instance, the courts—to "apply such law as would be applied . . . by the courts of the State" concerned. § 416(h)(2)(A). Without conceding Lawrence's ultimate entitlement to benefits, he invites us to grant certiorari, vacate the judgment below, and remand the case (GVR) so that the Court of Appeals may either decide it in light of the Commissioner's new statutory interpretation or remand the case to the Commissioner for reconsideration in light of that interpretation.

We conclude both that we have the power to issue a GVR order, and that such an order is an appropriate exercise of our discretionary certiorari jurisdiction.

Title 28 U. S. C. §2106 appears on its face to confer upon this Court a broad power to GVR: "The Supreme Court or any other court of appellate jurisdiction may . . . vacate . . . any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and . . . require such further proceedings to be had as may be just under the circumstances." In his dissent issued today in this case and in *Stutson* v. *United States*, *post*, p. 193, another case in which we issue a GVR order, JUSTICE SCALIA contends that "traditional practice" and "the Constitution and laws of the United States" impose "implicit limitations" on this power. *Post*, at 178. We respectfully disagree. We perceive no textual basis for such limitations. The Constitution limits our "appellate Jurisdiction" to issues of "[federal] Law and Fact," see Art. III, §2, but leaves to Congress the power to "ordain and establish . . . inferior Courts," Art. III, §1, and to make "Exceptions" and "Regulations" limiting and controlling our appellate jurisdiction. Insofar as Congress appears to have authorized such action, we believe that this Court has the power to remand to a lower federal court any case raising a federal issue that is properly before us in our appellate capacity.

Our past practice affirms this conclusion. Although, as JUSTICE SCALIA's dissent explains, *post*, at 179–183, the *exercise* of our GVR power was, until recent times, rare, its infrequent early use may be explained in large part by the smaller size of our certiorari docket in earlier times. Regardless of its earlier history, however, the GVR order has, over the past 50 years, become an integral part of this Court's practice, accepted and employed by all sitting and recent Justices. We have GVR'd in light of a wide range of developments, including our own decisions, see *post*, at 180 (SCALIA, J., dissenting), State Supreme Court decisions, see,

e. g., *Conner* v. *Simler*, 367 U. S. 486 (1961), new federal statutes, see, *e. g.*, *Sioux Tribe of Indians* v. *United States*, 329 U. S. 685 (1946), administrative reinterpretations of federal statutes, see, *e. g.*, *Schmidt* v. *Espy*, 513 U. S. 801 (1994), new state statutes, see, *e. g.*, *Louisiana* v. *Hays*, 512 U. S. 1230 (1994), changed factual circumstances, see, *e. g.*, *NLRB* v. *Federal Motor Truck Co.*, 325 U. S. 838 (1945) (demilitarization of employees), and confessions of error or other positions newly taken by the Solicitor General, see, *e. g.*, *Wells* v. *United States*, 511 U. S. 1050 (1994); *Reed* v. *United States*, 510 U. S. 1188 (1994); *Ramirez* v. *United States*, 510 U. S. 1103 (1994); *Chappell* v. *United States*, 494 U. S. 1075 (1990); *Polsky* v. *Wetherill*, 403 U. S. 916 (1971), and state attorneys general, see, *e. g.*, *Cuffle* v. *Avenenti*, 498 U. S. 996 (1990); *Nicholson* v. *Boles*, 375 U. S. 25 (1963).

This practice has some virtues. In an appropriate case, a GVR order conserves the scarce resources of this Court that might otherwise be expended on plenary consideration, assists the court below by flagging a particular issue that it does not appear to have fully considered, assists this Court by procuring the benefit of the lower court's insight before we rule on the merits, and alleviates the "[p]otential for unequal treatment" that is inherent in our inability to grant plenary review of all pending cases raising similar issues, see *United States* v. *Johnson*, 457 U. S. 537, 556, n. 16 (1982); cf. *Griffith* v. *Kentucky*, 479 U. S. 314, 323 (1987) ("[W]e fulfill our judicial responsibility by instructing the lower courts to apply the new rule retroactively to cases not yet final"). Where intervening developments, or recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation, a GVR order is, we believe, potentially appropriate. Whether a GVR order is ulti-

mately appropriate depends further on the equities of the case: If it appears that the intervening development, such as a confession of error in some, but not all, aspects of the decision below, is part of an unfair or manipulative litigation strategy, or if the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration by the lower court, a GVR order is inappropriate. This approach is similar in its flexibility to this Court's longstanding approach to applications for stays and other summary remedies granted without determining the merits of the case under the All Writs Act, 28 U. S. C. § 1651. See, *e. g.*, *Heckler* v. *Lopez*, 463 U. S. 1328 (1983) (REHNQUIST, J., in chambers) (staying a District Court order pending the decision on the merits of the Court of Appeals). (Naturally, because GVR orders are premised on matters that we have reason to believe the court below did not fully consider, and because they require only further consideration, the standard that we apply in deciding whether to GVR is somewhat more liberal than the All Writs Act standard, under which relief is granted only upon a showing that a grant of certiorari and eventual reversal are probable, see *id.*, at 1330.) Used in accordance with this approach, the GVR order can improve the fairness and accuracy of judicial outcomes while at the same time serving as a cautious and deferential alternative to summary reversal in cases whose precedential significance does not merit our plenary review.

JUSTICE SCALIA's dissent would confine GVR's to three categories of cases:

> "(1) where an intervening factor has arisen that has a legal bearing upon the decision, (2) where, in a context not governed by *Michigan* v. *Long*, 463 U. S. 1032 (1983), clarification of the opinion below is needed to assure our jurisdiction, and (3) . . . where the respondent or appellee confesses error in the judgment below." *Post*, at 191–192.

While a large proportion of this Court's GVR orders fall within these categories, we find that, especially as the dissent construes them, they are too narrow to account for the full extent of our actual practice. We find two aspects in particular of the dissent's approach too restrictive. First, the dissent would insist that only matters that the lower court had no "opportunity" to consider can be the basis for GVR orders. Second, it would impose special restrictions as to when the Court may GVR in light of changes of position by litigants.

JUSTICE SCALIA's dissent concedes—correctly, we believe—that its first category—"intervening factor[s]"— must be extended to include at least Supreme Court decisions rendered so shortly before the lower court's decision that the lower court had no "opportunity" to apply them. *Post*, at 181. The dissent does not explain, however, why what the lower court had an "opportunity" to consider should be decisive, or how its "opportunity" is to be assessed. In *Robinson* v. *Story*, 469 U. S. 1081 (1984), we GVR'd for further consideration in light of a Supreme Court decision rendered almost three months *before* the summary affirmance by the Court of Appeals that was the subject of the petition for certiorari. Were those three months sufficient "opportunity" for the court to apprise itself (or be apprised by the parties) of the new, potentially relevant Supreme Court decision? If *Robinson* was properly GVR'd, we have difficulty understanding the dissent's objection to our GVR order today in *Stutson*, where, as in *Robinson*, the Court of Appeals wrote no opinion to show whether or how it considered a precedent of ours that the District Court had had no opportunity to consider. In both cases, the Court of Appeals "*might* (or might not) have relied on a standard [nonapplication of the prior Supreme Court decision] that *might* (or might not) be wrong [and] that *might* (or might not) have affected the outcome." *Post*, at 185 (SCALIA, J., dissenting). The only pertinent difference that we can discern between

the two cases is that the recent Supreme Court precedent was briefed to the Court of Appeals in *Stutson*, but we have never held lower court briefing to bar our review and vacatur where the lower court's order shows no sign of having applied the precedents that were briefed. Compare *post*, at 185–186 (asserting that "we have no power" to vacate and remand in *Stutson* after relevant briefing and a summary order below), with, *e. g.*, *Netherland* v. *Tuggle*, 515 U. S. 951 (1995) *(per curiam)* (vacating Court of Appeals' summary order staying execution for probable failure to apply a 12-year-old Supreme Court precedent that the parties briefed to the Court of Appeals; this Court itself granted a stay a week later, applying that precedent, see *Tuggle* v. *Netherland*, 515 U. S. 1188 (1995)). As the prevalence of summary dispositions by the Courts of Appeals continues to increase with the burgeoning federal docket—in 1994, over 11% of Court of Appeals decisions on the merits,[1] and many more procedural decisions, were summary—such cases will, no doubt, arise more frequently. In this context, it is important that the meaningful exercise of this Court's appellate powers not be precluded by uncertainty as to what the court below "*might* . . . have relied on." And we are well aware, as are Supreme Court practitioners and lower courts, that while not immune from our plenary review, ambiguous summary dispositions below tend, by their very nature, to lack the precedential significance that we generally look for in deciding whether to exercise our discretion to grant plenary review. We are therefore more ready than the dissent to issue a GVR order in cases in which recent events have cast substantial doubt on the correctness of the lower court's summary disposition.

With regard to confessions of error and other changes of position by litigants, we agree on several points. All Mem-

[1] See Administrative Office of United States Courts, Reports of Proceedings of Judicial Conference of the United States, 1994, table S–3 (3,080 out of 27,219 decisions on the merits).

bers of the Court are agreed that we "should [not] mechanically accept any suggestion from the Solicitor General that a decision rendered in favor of the Government by a United States Court of Appeals was in error," *Mariscal* v. *United States*, 449 U. S. 405, 406 (1981) (REHNQUIST, J., dissenting). And the dissent acknowledges as "well entrenched," *post*, at 183 (opinion of SCALIA, J.), our practice of GVR'ing in light of plausible confessions of error without determining their merits. Moreover, the dissent is ready in principle to GVR in light of a new agency interpretation of a statute that is entitled to deference under the rule of *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). *Post*, at 186–187.

In other respects, however, our approaches to changes of position by litigants diverge. JUSTICE SCALIA's dissent disapproves (although it acknowledges) this Court's well-established practice of GVR'ing based on confessions of error that do not purport to concede the whole case. *Post*, at 183, 184–185; cf., *e. g.*, *Moore* v. *United States*, 429 U. S. 20 (1976) (GVR'ing based on the Solicitor General's confession of error, notwithstanding the Solicitor General's unresolved claim that the error was harmless). The dissent would apparently insist that such GVR's be confined to cases in which the confession of error concerns a "legal point on which the lower court explicitly relied," or on which we otherwise "know" for certain that the lower court's judgment rested. *Post*, at 185. But, given the legitimacy of GVR's on the basis of confessions of error without determining the merits, we do not understand why a reasonable probability that the lower court relied on the point at issue should not suffice. As we have explained, *supra*, at 167, we have GVR'd on the basis of a reasonable probability of a change in result in nonconfession of error cases, see, *e. g.*, *Robinson* v. *Story*, *supra*. We see no special reason why, in a confession of error case, a *certainty* that the lower court relied on the point in question should be necessary before we may GVR on the basis of a

reasonable probability that giving the lower court the opportunity to consider that point anew will alter the result.

Similarly, we reject JUSTICE SCALIA's dissent's other requirement of certainty for GVR's founded on a change of position by the Government. The dissent accepts in principle that a new interpretation of a statute adopted by the agency charged with implementing it may be entitled to deference in the context of litigation to which the Government is a party. But the dissent would require that before such new interpretation may be the basis for a GVR order, we must be "*certain* that the change in position is legally cognizable," *post*, at 187 (emphasis added), in the sense that it is "entitled to deference," *post*, at 188, despite its timing, in that particular case. This requirement, too, appears to be confined to cases in which the event on which the GVR is based is a change of position by the Government, see *post*, at 187; we do not, for example, understand the dissent to contend that a similar requirement of "lega[l] cognizab[ility]" should apply to GVR's in habeas corpus cases in which the procedural bar that we recognized in *Teague* v. *Lane*, 489 U. S. 288 (1989), might apply. Again, we do not understand the rationale for imposing such special requirements on GVR's based on a change of position. If it appears reasonably probable that a confession of error reveals a genuine and potentially determinative error by the court below, a GVR may be appropriate; similarly, we believe that if an agency interpretation is reasonably probably entitled to deference and potentially determinative, we may GVR in light of it. It is precisely because of uncertainty that we GVR. We do not see why uncertainty as to the "lega[l] cognizab[ility]" of an agency interpretation in a particular case should be treated differently from uncertainty as to its application in that case. Indeed, to determine on the merits whether deference is owed to the agency interpretation, based on a circumstance—*i. e.*, its timing with respect to the case at hand—that will not be present in any other case brought

under the statute at issue, when the Court of Appeals has had no "opportunity" to consider the new agency interpretation, appears to us to defeat the purpose of GVR'ing. Rather, we think it appropriate to apply our normal "reasonable probability" test, and to defer any special concerns about strategic litigating behavior that are raised by changes in the Government's position to consideration of the equities. Under our approach, neither uncertainty as to whether the Government's change of position, if accepted, would be outcome determinative, nor uncertainty as to the "lega[l] cognizab[ility]" of an administrative interpretation, preclude a GVR if the overall probabilities and equities support the GVR order. Indeed, we issued just such a GVR order last Term, without recorded dissent. See *Schmidt* v. *Espy*, 513 U. S. 801 (1994) (GVR on the basis of the Solicitor General's representation that "[a]fter further examination of the regulation and its application in the present case, . . . the Department of Agriculture has determined that petitioners' lease-back/buyback application should be reconsidered without respect to the good faith requirement," Brief for Respondent in *Schmidt* v. *Espy*, O. T. 1994, No. 93–1707, p. 7; see also *id.*, at 10, n. 5 (maintaining that other obstacles to petitioners' application might remain)).

Our differences with JUSTICE SCALIA's dissent should not overshadow the substantial level of agreement shared by all Members of this Court. On the one hand, all are agreed that a wide range of intervening developments, including confessions of error, may justify a GVR order. On the other hand, all are agreed that our GVR power should be exercised sparingly. This Court should not just GVR a case "because it finds the opinion, though arguably correct, incomplete and unworkmanlike; or because it observes that there has been a postjudgment change in the personnel of the state supreme court, and wishes to give the new state justices a shot at the case." *Post*, at 189 (SCALIA, J., dissenting); accord, *Alvarado* v. *United States*, 497 U. S. 543, 545 (1990) (REHNQUIST,

C. J., dissenting). Respect for lower courts, the public interest in finality of judgments, and concern about our own expanding certiorari docket all counsel against undisciplined GVR'ing. It remains to apply these principles to the facts of this case.

The feature of this case that, in our view, makes a GVR order appropriate is the new interpretation of the Social Security Act that the Solicitor General informs us that the Social Security Administration, the agency charged with implementing that Act, has adopted. As JUSTICE SCALIA's dissent notes, *post*, at 187, we have not settled whether and to what extent deference is due to an administrative interpreation—its "lega[l] cognizab[ility]"—in a case that has already reached the appeal or certiorari stage when that interpretation is adopted. But in our view, see *supra*, at 172–173, such uncertainty does not preclude a GVR. Indeed, it is precisely because we are uncertain, without undertaking plenary analysis, of the legal impact of a new development, especially one, such as the present, which the lower court has had no opportunity to consider, that we GVR. Here, as in *Schmidt*, *supra*, the Solicitor General has recommended judicial reconsideration of the merits, while not conceding the petitioner's ultimate entitlement to statutory benefits, based on a new statutory interpretation that will apparently be applied, and will probably be entitled to deference, in future cases nationwide. Here, as in *Schmidt*, our summary review leads us to the conclusion that there is a reasonable probability that the Court of Appeals would conclude that the timing of the agency's interpretation does not preclude the deference that it would otherwise receive, and that it may be outcome determinative in this case. A GVR order is, therefore, appropriate, subject to the equities.

As to the equities, it seems clear that they favor a GVR order here. That disposition has the Government's express support, notwithstanding that its purpose is to give the Court of Appeals the opportunity to consider an administrative interpretation that appears contrary to the Govern-

ment's narrow self-interest. And the Government has informed us that it intends to apply that interpretation to future cases nationwide. Giving Lawrence a chance to benefit from it furthers fairness by treating Lawrence like other future benefits applicants. We acknowledge the dissent's concern that postlitigation interpretations may be the product of unfair or manipulative Government litigating strategies, see *post*, at 187, and we therefore view late changes of position by the Government with some skepticism. That *general* concern does not, however, appear to us to require that we deprive Lawrence of the benefit of a favorable administrative reinterpretation in these *particular* circumstances. We believe, therefore, that the equities and legal uncertainties of this case together merit a GVR order.[2]

Accordingly, the motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of the position taken in the brief for respondent filed by the Solicitor General, August 17, 1995.

JUSTICE STEVENS, concurring.*

The Court persuasively explains why we have "the power to remand to a lower federal court any case raising a federal issue that is properly before us in our appellate capacity." *Ante*, at 166. That conclusion comports with a primary characteristic—and, I believe, virtue—of our discretionary authority to manage our certiorari docket: our ability to

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[2] In a letter filed on October 24, 1995, the Solicitor General advised this Court of a July 1995 amendment to the North Carolina paternity statute, N. C. Gen. Stat. §49–14(c). We find it unnecessary to decide whether this development independently justifies our GVR order. The Court of Appeals is free to consider its significance on remand.

*[This opinion applies also to No. 94–8988, *Stutson* v. *United States*, *post*, p. 193.]

apply the "totality-of-the-circumstances" approach that JUSTICE SCALIA finds objectionable. *Post*, at 191. The Court's wise disposition of these petitions falls squarely within the best traditions of its administration of that docket. I therefore join the Court's opinions.

CHIEF JUSTICE REHNQUIST, concurring in No. 94–9323 and dissenting in No. 94–8988, *post*, p. 193.

I agree, for the reasons given by JUSTICE SCALIA, that the Court is mistaken in vacating the judgment in No. 94–8988, *Stutson* v. *United States*, *post*, p. 193. I also agree with much of the rest of JUSTICE SCALIA's dissent, but I do not agree with that portion, *post*, at 179, dealing with what he describes as "situations calling forth the special deference owed to state law and state courts in our system of federalism." Of the three cases that he cites for this proposition, one, *Missouri ex rel. Wabash R. Co.* v. *Public Serv. Comm'n*, 273 U. S. 126 (1927), came to this Court on writ of error and therefore was required to be decided on the merits. The second, *State Farm Mut. Automobile Ins. Co.* v. *Duel*, 324 U. S. 154 (1945), came to us on appeal from a State Supreme Court, and was thus also required to be decided on the merits. The third, *Huddleston* v. *Dwyer*, 322 U. S. 232 (1944), was a case in which certiorari had already been granted, and the case argued on the merits. None of them, then, involved a choice between denying certiorari, on the one hand, and simply vacating the judgment of the lower court without any opinion, on the other. Vacating a judgment without explanation when the alternative is to simply deny certiorari involves at best the correction of perceived error made by the lower courts. In this connection, we would do well to bear in mind the admonition of Chief Justice William Howard Taft, one of the architects of the Certiorari Act of 1925, as described by his biographer:

> "It was vital, he said in opening his drive for the Judges' bill, that cases before the Court be reduced without lim-

> iting the function of pronouncing 'the last word on every important issue under the Constitution and the statutes of the United States.' A Supreme Court, on the other hand, should not be a tribunal obligated to weigh justice among contesting parties.
>
> "'They have had all they have a right to claim,' Taft said, 'when they have had two courts in which to have adjudicated their controversy.'" 2 H. Pringle, The Life and Times of William Howard Taft 997–998 (1939).

I agree with the decision announced in the *per curiam* to vacate the judgment of the Court of Appeals for the Fourth Circuit in No. 94–9323, *Lawrence* v. *Chater*. Whether or not the change of position by the Social Security Administration is "cognizable," in the words of JUSTICE SCALIA, *post*, at 187, it is perfectly reasonable to request the Court of Appeals to answer that question in the first instance.

JUSTICE SCALIA, with whom JUSTICE THOMAS joins, dissenting.*

I dissent because I believe that the dispositions in both No. 94–8988, *post*, p. 193, and No. 94–9323, *ante*, p. 163, are improper extensions of our limited power to vacate without first finding error below.

It sometimes occurs that, after having considered the lower court decision and found error, an appellate court merely reverses or vacates and then remands—that is, it sets the judgment aside and sends the case back to the lower court for further proceedings, rather than entering or directing entry of judgment for the appellant or petitioner. That is the appropriate course whenever the finding of error does not automatically entitle the appellant or petitioner to judgment, and the appellate court cannot conduct (or chooses not to conduct) the further inquiry necessary to resolve the ques-

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*[This opinion applies also to No. 94–8988, *Stutson* v. *United States*, *post*, p. 193.]

tions remaining in the litigation. Our books are full of such cases, from *Glass* v. *Sloop Betsey*, 3 Dall. 6 (1794), and *Clarke* v. *Russel*, 3 Dall. 415 (1799), to *Vernonia School Dist. 47J* v. *Acton*, 515 U. S. 646 (1995), and *Tuggle* v. *Netherland*, *ante*, p. 10.

What is at issue here, however, is a different sort of creature, which might be called "no-fault V&R": vacation of a judgment and remand *without* any determination of error in the judgment below. In our discretionary certiorari system of review, such an order has acquired the acronym "GVR"—for the Court *grants* certiorari, *vacates* the judgment below, and *remands* for further proceedings.[1] The question presented by today's cases is whether there is any limitation (other than the mandate "do what is fair") upon this practice. The Court's *per curiam* opinions answer "no"; I disagree.

Title 28 U. S. C. § 2106 provides that "[t]he Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances." This facially unlimited statutory text is subject to the implicit limitations imposed by traditional practice and by the nature of the appellate system created by the Constitution and laws of the United States. The inferior federal courts (to say nothing of state courts) are not the creatures

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[1] I emphasize that what is at issue here is our power to set aside a valid judgment—*not*, as JUSTICE STEVENS' concurrence would have it, "our discretionary authority to manage our certiorari docket." *Ante*, at 175. We do the latter by accepting or declining review. But "[w]henever this Court grants certiorari and vacates a court of appeals judgment in order to allow that court to reconsider its decision . . . , the Court *is acting on the merits.*" *Board of Trustees of Keene State College* v. *Sweeney*, 439 U. S. 24, 25–26 (1978) (STEVENS, J., dissenting) (emphasis added). Thus, today's orders go far beyond what JUSTICE STEVENS now refers to as "administration of [our certiorari] docket." *Ante*, at 176.

and agents of this body—as are masters, whose work we may reject and send back for redoing at our own pleasure. Inferior courts are separately authorized in the Constitution, see Art. I, § 8; Art. III, § 1, created by Acts of Congress, see, *e. g.*, Judiciary Act of 1789, 1 Stat. 73; Evarts Act, Act of Mar. 3, 1891, 26 Stat. 826, and staffed by judges whose manner of appointment and tenure of office are the same as our own, see U. S. Const., Art. II, § 2; Art. III, § 1; 28 U. S. C. §§ 44, 133, 134. Despite the unqualified language of § 2106, we cannot, for example, "reverse" a judgment of one of these courts "and direct the entry" of a different judgment whenever we disagree with what has been done, but only when we can identify a controlling error of law. And I think we cannot "vacate" and "remand" in the circumstances here.

The Court today seeks to portray our no-fault V&R practice as traditionally covering a kaleidoscopic diversity of situations. See *Lawrence* v. *Chater*, *ante*, at 166–167. That is in my view a misportrayal; the practice has always been limited to a few discrete categories of cases. It began, apparently, in situations calling forth the special deference owed to state law and state courts in our system of federalism. In *Missouri ex rel. Wabash R. Co.* v. *Public Serv. Comm'n*, 273 U. S. 126 (1927), for example, rather than find error on the basis of the federal constitutional claims raised, this Court set aside the judgment of the Missouri Supreme Court and remanded the case to that court for further proceedings so that it could consider the meaning and effect of a state statute that had been enacted after its judgment had been entered. We reasoned that "[w]hile this Court may decide these [state-law] questions, it is not obliged to do so, and in view of their nature, we deem it appropriate to refer the determination to the state court." *Id.*, at 131. In other words, we left it to the state court to decide the effect of the intervening event, rather than follow our usual practice of deciding that question for ourselves, see, *e. g.*, *Steamship Co.* v. *Joliffe*, 2 Wall. 450, 456–458 (1865). See generally *United*

States v. *Schooner Peggy*, 1 Cranch 103, 110 (1801) ("If, subsequent to the judgment [entered by a lower court], and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied."). Later cases took the same deferential approach to state courts when the intervening event consisted of one of our own opinions. See, *e. g.*, *State Tax Comm'n* v. *Van Cott*, 306 U. S. 511 (1939). By 1945, we could state that it was "[a] customary procedure" for the Court "to vacate the judgment of [a] state court where there has been a supervening event since its rendition which alters the basis upon which the judgment rests, and to remand the case so that the court from which it came might reconsider the question in light of the changed circumstances." *State Farm Mut. Automobile Ins. Co.* v. *Duel*, 324 U. S. 154, 161 (1945). Similarly, where a federal court of appeals' decision on a point of state law had been cast in doubt by an intervening state supreme court decision, it became our practice to vacate and remand so that the question could be decided by judges "familiar with the intricacies and trends of local law and practice." *Huddleston* v. *Dwyer*, 322 U. S. 232, 237 (1944).

The "intervening event" branch of our no-fault V&R practice has been extended to the seemingly analogous situation (though *not* one implicating the special needs of federalism) in which an intervening event (ordinarily a postjudgment decision of this Court) has cast doubt on the judgment rendered by a lower federal court or a state court concerning a *federal* question. See, *e. g.*, *Amer* v. *Superior Court of Cal., County of Los Angeles*, 334 U. S. 813 (1948); *Goldbaum* v. *United States*, 348 U. S. 905 (1955); *Henry* v. *City of Rock Hill*, 376 U. S. 776 (1964). This is undoubtedly the largest category of "GVRs" that now exists. See, *e. g.*, *Exxon Corp.* v. *Youell*, *post*, p. 801; *Kapoor* v. *United States*, *post*, p. 801; *Edmond* v. *United States*, *post*, p. 802; *Pacesetter Constr. Co.* v. *Carpenters 46 Northern Cal. Ctys. Conference Bd.*, *post*, p. 802; *Doctor's Associates, Inc.* v. *Casarotto*, 515 U. S. 1129

(1995); *Calamia* v. *Singletary*, 514 U. S. 1124 (1995). We regularly hold cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted *in order that* (if appropriate) they may be "GVR'd" when the case is decided. More recently, we have indulged in the practice of vacating and remanding in light of a decision of ours that *preceded* the judgment in question, but by so little time that the lower court might have been unaware of it. See, *e. g.*, *Grier* v. *United States*, 419 U. S. 989 (1974). These applications of no-fault V&R have nothing to do with federalism, but they are appropriate to preserve the operational premise of a multitiered judicial system (viz., that lower courts will have the first opportunity to apply the governing law to the facts) and to avoid the unseemliness of holding judgments to be in error on the basis of law that did not exist when the judgments were rendered below. They thus serve the interests of efficiency and of concern for the dignity of state and lower federal tribunals.

An entirely separate branch of our no-fault V&R jurisprudence, but again one that originates in the special needs of federalism, pertains to decisions of state supreme courts that are ambiguous as to whether they rest on state-law or federal-law grounds. Rather than run the risk of improperly reversing a judgment based on state law, we adopted the practice of vacating and remanding so that the state court could make the reasons for its judgment clear. See, *e. g.*, *Minnesota* v. *National Tea Co.*, 309 U. S. 551 (1940); *Department of Mental Hygiene of Cal.* v. *Kirchner*, 380 U. S. 194 (1965).[2]

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[2] In *Michigan* v. *Long*, 463 U. S. 1032 (1983), we largely supplanted this policy with the rule that state-court decisions discussing federal law will be presumed to be based on federal law unless the contrary is clear from the face of the opinion. *Id.*, at 1037–1044; see also *Arizona* v. *Evans*, 514 U. S. 1, 6–9 (1995) (reaffirming this approach). But cf. *Capital Cities Media, Inc.* v. *Toole*, 466 U. S. 378 (1984) (post-*Long* decision vacating and remanding for clarification of state supreme court decision rendered without opinion).

We have GVR'd with increasing frequency in recent years on the basis of suggestions or representations made by the Solicitor General. Some of these cases are nothing more than examples of the "intervening-event GVR" discussed above, the Solicitor General pointing out that a case or statute has intervened since the judgment below. See, *e. g.*, *Woods* v. *Durr*, 336 U. S. 941 (1949); *Altiere* v. *United States*, 382 U. S. 367 (1966). We have also announced no-fault GVR's, however, when there has been no intervening development other than the Solicitor General's confession of error in the judgment. That is a relatively new practice. As recently as 1942 a unanimous Court (two Justices not participating) wrote the following:

> "The public trust reposed in the law enforcement officers of the Government requires that they be quick to confess error when, in their opinion, a miscarriage of justice may result from their remaining silent. But such a confession does not relieve this Court of the performance of the judicial function. The considered judgment of the law enforcement officers that reversible error has been committed is entitled to great weight, but our judicial obligations compel us to examine independently the errors confessed. . . . Furthermore, our judgments are precedents, and the proper administration of the criminal law cannot be left merely to the stipulation of the parties. . . ." *Young* v. *United States*, 315 U. S. 257, 258–259 (1942).

Cf. *U. S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U. S. 18 (1994) (setting aside of a valid judicial judgment should not turn upon agreement of the parties). Many of the early GVR's based upon the Government's confession of error appear not to have been no-fault V&R's at all, but rather summary decisions on the merits, with remand for further proceedings. See, *e. g.*, *Chiarella* v. *United States*, 341 U. S. 946 (1951) ("*[u]pon consideration of the record* and

the confession of error by the Solicitor General," remanding to the District Court for resentencing) (emphasis added); *Penner* v. *United States*, 399 U. S. 522 (1970) ("[o]n the basis of a confession of error by the Solicitor General and of an independent review of the record," remanding to the District Court "with instructions to dismiss the indictment").

Our recent practice, however, has been to remand in light of the confession of error without determining the merits, leaving it to the lower court to decide if the confession is correct. As late as 1981, the current Chief Justice, joined by Justice White, objected to this practice. See *Mariscal* v. *United States*, 449 U. S. 405, 407 (1981) (REHNQUIST, J., dissenting) ("I harbor serious doubt that our adversary system of justice is well served by . . . routinely vacating judgments which the Solicitor General questions without any independent examination of the merits on our own"). I agree with that position. The practice is by now well entrenched, however. See, *e. g.*, *Reed* v. *United States*, 510 U. S. 1188 (1994); *Ramirez* v. *United States*, 510 U. S. 1103 (1994). It may be considered a separate category of no-fault V&R.

Finally (and most questionably) we have in very recent years GVR'd where the Solicitor General has *not* conceded error in the judgment below, but has merely acknowledged that the ground, or one of the grounds, on which the lower court relied was mistaken. See, *e. g.*, *Alvarado* v. *United States*, 497 U. S. 543 (1990); *Chappell* v. *United States*, 494 U. S. 1075 (1990). That is in my view a mistaken practice, since we should not assume that a court of appeals has adopted a legal position only because the Government supported it. Four Justices now sitting on the Court have disapproved this sort of GVR. See *Alvarado*, *supra*, at 545 (REHNQUIST, C. J., joined by O'CONNOR, SCALIA, and KENNEDY, JJ., dissenting).[3]

[3] The Court misdescribes my position when it states that I would limit GVR's "based on confessions of error that do not purport to concede the whole case" to "cases in which the confession of error concerns a 'legal

Today's cases come within none of these categories of no-fault V&R, not even the questionable last one. In *Stutson* v. *United States*, *post*, p. 193, the decision "in light of" which we vacate the judgment and remand, *Pioneer Investment Services Co.* v. *Brunswick Associates Ltd. Partnership*, 507 U. S. 380 (1993), had been on the books for well more than a year before the Eleventh Circuit announced the judgment under review, and for almost two years before that court denied rehearing. Moreover, the parties *specifically argued* to the Court of Appeals the question whether *Pioneer* established the standard applicable to petitioner's claim of "excusable neglect" under Federal Rule of Appellate Procedure 4(b), with the United States disagreeing with petitioner and taking the position that *Pioneer* was *not* controlling. The Eleventh Circuit ruled against petitioner on the merits of his claim; its one-sentence order contained neither a reference to *Pioneer* nor any suggestion that the court viewed the case as turning on which party's proffered standard was applied.

The United States has now revised its legal position and—though it makes no suggestion that the Court of Appeals' judgment was incorrect—is of the view that *Pioneer does* establish the standard governing petitioner's claim. But the fact that the party who won below repudiates on certiorari its position on a particular point of law does not give rise to any "intervening," postjudgment factor that must be considered. The law is the law, whatever the parties, including the United States, may have argued. As described above,

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point on which the lower court explicitly relied.'" *Ante*, at 171 (quoting *infra*, at 185). Both the text above and the sentence immediately following the phrase that the Court quotes from my dissent, see *ibid.*, make my position clear. The line of distinction I would draw—and the one long established in our practice—is between a respondent's concession of error *in the lower court's judgment* and a respondent's concession of error that goes not to the judgment but merely to an aspect of the reasoning below or of respondent's argument below.

we have sometimes GVR'd where the Government has, while still supporting the judgment in its favor, conceded the error of a legal point on which the lower court explicitly relied. As I have explained, see *supra*, at 183, in my view even that practice denies valid judgments the respect to which they are entitled. But the GVR in the present case goes still further. We do not know in this case whether the Eleventh Circuit even *agreed* with the Government's position that has now been repudiated; for all we know, the court *applied Pioneer* and found against petitioner under that standard. The judgment is declared invalid because the Eleventh Circuit *might* (or might not) have relied on a standard (non-*Pioneer*) that *might* (or might not) be wrong, that *might* (or might not) have affected the outcome, and that the Eleventh Circuit *might* (or might not) abandon (whether or not it is wrong) because the Government has now abandoned it. This seems to me beyond all reason.

The Court justifies its setting aside of the judgment on the ground that "we [do not] place an excessive burden on [the Eleventh Circuit], relative to [petitioner's] liberty and due process interests, by inviting it to clarify its ambiguous ruling." *Stutson*, *post*, at 196. Vacating for ambiguity may be justifiable, as I have noted, when the ambiguity calls into question our very power to take and decide the case, see *supra*, at 181, and n. 2. But where that power is (as it is here) beyond doubt, it seems to me quite improper to vacate merely in order to get a better idea of whether the case is "worth" granting full review. If this is appropriate with respect to court of appeals' summary dispositions of criminal cases, I see no reason why it is not appropriate with respect to criminal dispositions accompanied by opinions as well. Or, for that matter, why it is not appropriate for civil cases. "GVR'd for clarification of ——" should become a common form of order, drastically altering the role of this Court. In my view we have no power to make such a tutelary remand,

as to a schoolboy made to do his homework again.[4] The Court insists that declining to remand for clarification would risk "immunizing summary dispositions . . . from our review," *Stutson*, *post*, at 196. That is not so. It is fully within our power to review this case, and any other case summarily decided below, by granting certiorari and proceeding to consider the merits; or indeed, where the circumstances warrant, to summarily reverse. Cf. Hellman, "Granted, Vacated, and Remanded"—Shedding Light on a Dark Corner of Supreme Court Practice, 67 Judicature 389, 391–392 (1984) (noting that in the 1970's as the Court's GVR practice "increased far beyond what it had been in earlier years," its use of summary reversal based on intervening precedents decreased dramatically).

In No. 94–9323, the Court again GVR's because the Government has changed a legal position: The Commissioner of Social Security informs us that she now agrees with petitioner on a preliminary point of law that the Court of Appeals found in the Government's favor. And here again, respondent does not concede that the judgment below was in error, for she "ha[s] not . . . reached a firm conclusion" as to her position on the subsequent point of law that will (if her recantation on the preliminary point is accepted) control the outcome of the case. Brief for Respondent in No. 94–9323, p. 13.[5] There is, however, a special factor in this second case: Respondent is an agency head, whose view on the legal point in question is in some circumstances entitled to defer-

[4] *Netherland* v. *Tuggle*, 515 U. S. 951 (1995), upon which the Court relies, see *ante*, at 170, is not to the contrary. That was not a "no-fault V&R," but a reversal of the lower court for abuse of discretion in its entry of a stay order.

[5] Because the Commissioner is not prepared to say that she disagrees with petitioner as to the proper disposition of this case, it is questionable whether any case or controversy subsists. Quite apart from the other difficulties with the course the Court has chosen, it seems to me we should not permit the Commissioner to trouble the Fourth Circuit again until she makes up her mind on this issue.

ence, see *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). If it were clear that respondent's change in position were entitled to deference, I would have no problem with the GVR; the new position would then constitute an intervening postjudgment factor whose effect the Court of Appeals should be allowed to consider. But even if we allow deference to an agency view first expressed in pending litigation (as some think we should not, see Anthony, Which Agency Interpretations Should Bind Citizens and the Courts?, 7 Yale J. Reg. 1, 60–61 (1990); cf. Merrill, Judicial Deference to Executive Precedent, 101 Yale L. J. 969, 1023 (1992)), surely a decent concern for those litigating against the Government and for our lower court judges should induce us to disregard, for *Chevron* purposes, a litigating position *first expressed at the certiorari stage.* The United States is the most frequent, and hence the most calculating, of our litigants. If we accord deference in the circumstances here, we can expect the Government to take full advantage of the opportunity to wash out, on certiorari, disadvantageous positions it has embraced below; and we can expect it to focus less of its energy upon getting its position "right" in the courts of appeals.

The Court, however, thinks it unnecessary to decide the deference question. It is enough, as the Court sees it, that its summary review has led it to "believe that [the] agency interpretation is reasonably probably entitled to deference and potentially determinative." *Ante*, at 172. I do not agree. It seems to me our "intervening-event GVR's" should not be extended to the situation where (1) the intervening event consists of a party's going back on what it argued to the court of appeals, *and* (2) it is not even certain that the change in position is legally cognizable. That seems to me to accord inadequate respect to the work of our colleagues below. Moreover, it is not clear to me that the question before us (should an agency change of position at the certiorari stage be accorded deference?) *can even be reached*

by the Court of Appeals. Surely we do not expect the Court of Appeals to declare our vacation and remand invalid. Thus, the Court of Appeals will have before it the somewhat *different* question whether the agency change of position *before it* is entitled to deference. I suppose it may conclude that, *since* a change of position on certiorari is not entitled to deference, a change of position on a remand triggered by change of position on certiorari is not entitled to deference—but that would assuredly be a convoluted holding. The question of what is permissible on certiorari seems to me peculiarly within the domain of this Court. Since we are in doubt on the deference point in the present case, we should either deny the petition, or grant it and have the deference point argued.

The Court's failure to comprehend why it should make any difference that the Government's changed litigating position may not be entitled to deference, see *ante*, at 172–173, displays a lamentable lack of appreciation of the concept of adding insult to injury. It is disrespectful enough of a lower court to set its considered judgment aside because the Government has altered the playing field on appeal; it is downright insulting to do so when the Government's bait-and-switch performance *has not for a certainty altered any factor relevant to the decision.* In that situation, at least, we should let the Government live with the consequences of its fickleness or inattention. The Court claims that it would "defeat the purpose of GVR'ing" to determine the deference issue on the merits, since that issue is "based on a circumstance . . . that will not be present in any other case brought under the statute at issue." *Ibid.* That is true enough (barring the unlikely event that the Government in a later case under this very statute again switches its position at the certiorari stage). But the issue of whether *Chevron* deference should be accorded to a certiorari-stage switch of litigating position is not at all unique to the individual case or bound up with the underlying statute. It always arises, of

course, in an individual case involving a particular statute, as do most questions of law. But the issue itself is thoroughly generalizable, and of general importance. In any event, I do not urge that we determine the deference issue on the merits; my vote in these cases is to deny the petitions. Finally, I must remark upon the Court's assertion that we issued "just such a GVR order last Term, without recorded dissent," *ante*, at 173, citing *Schmidt* v. *Espy*, 513 U. S. 801 (1994): It is not customary, but quite rare, to *record* dissents from grants of certiorari, including GVR's. It would be wrong to conclude from the unsigned order in *Schmidt* that the vote to GVR was unanimous, or even close to unanimous. Thus, *Schmidt* does not demonstrate that bait-and-switch-deference GVR's are an accepted practice; but the fact that *Schmidt* was apparently the first-ever such GVR, combined with the fact that the Government is back one Term later for another helping, demonstrates the accuracy of my prediction that the Solicitor General will be quick to take advantage of this new indulgence.

What is more momentous than the Court's judgments in the particular cases before us—each of which extends our prior practice just a little bit—is its expansive expression of the authority that supports those judgments. It acknowledges, to begin with, no constitutional limitation on our power to vacate lower court orders properly brought before us. *Ante*, at 166. This presumably means that the constitutional grant of "appellate Jurisdiction" over "Cases . . . arising under [the] Constitution [and] Laws of the United States," Art. III, § 2, empowers the Court to vacate a state supreme court judgment, and remand the case, because it finds the opinion, though arguably correct, incomplete and unworkmanlike; or because it observes that there has been a postjudgment change in the personnel of the state supreme court, and wishes to give the new state justices a shot at the case. I think that is not so. When the Constitution divides our jurisdiction into "original Jurisdiction" and "appellate

Jurisdiction," I think it conveys, with respect to the latter, the traditional accoutrements of appellate power. There doubtless is room for some innovation, particularly such as may be necessary to adapt to a novel system of federalism; but the innovation cannot be limitless without altering the nature of the power conferred.

Not only does the Court reject any constitutional limitation upon its power to vacate; it is unwilling to submit to any prudential constraint as well. Even while acknowledging the potential for "unfair[ness] or manipulat[ion]" and professing to agree that "our GVR power should be exercised sparingly," *ante*, at 168, 173, the Court commits to no standard that will control that power, other than that cloak for all excesses, "the equities," *ante*, at 168; see *ante*, at 173, 174, 175; *post*, at 196. We may, as the Court now pronounces, set aside valid judgments not merely when they are wrong, not merely when intervening events require that someone (either the lower court or we) reconsider them on new facts or under new legal criteria, not merely when it is ambiguous whether we have power to review them, not merely when the United States concedes that the judgment below (or one of the points of law relied upon below, or even one of the points of law *possibly* relied upon below) is wrong; but whenever there is "a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration." *Ante*, at 167. The power to "revis[e] and correc[t]" for error, *Marbury* v. *Madison*, 1 Cranch 137, 175 (1803), has become a power to void for suspicion. Comparing the modest origins of the Court's no-fault V&R policy with today's expansive *dénouement* should make even the most Pollyannish reformer believe in camel's noses, wedges, and slippery slopes.

The Court justifies its approach on the ground that it "alleviates the potential for unequal treatment that is inherent in our inability to grant plenary review of all pending cases

raising similar issues." *Ante*, at 167 (internal quotation marks omitted). I do not see how it can promote equal treatment to announce a practice that we cannot possibly pursue in every case. If we were to plumb the "equities" and ponder the "errors" for all the petitions that come before us—if we were to conduct, for example, in all cases involving summary decisions, today's balancing of the "burden" to the Court of Appeals against the litigant's "interests" in having clarification of the ruling, see *Stutson*, *post*, at 196, or today's calculation of "the overall probabilities and equities," *ante*, at 173—we would have no time left for the cases we grant to consider on the merits. Of course we do not *purport* to conduct such inquiries, not even the basic one of whether the decision below is probably in "error"—which is why we insist that our denial of certiorari does not suggest a view on the merits, see, *e. g.*, *Teague* v. *Lane*, 489 U. S. 288, 296 (1989); *Singleton* v. *Commissioner*, 439 U. S. 942 (1978) (STEVENS, J., respecting denial of petition for writ of certiorari). Moreover, even if we tried applying the Court's "totality-of-the-circumstances" evaluation to all the petitions coming before us, we would be unlikely to achieve equal treatment. Such a plastic criterion is liable to produce inconsistent results in any series of decisions; it is virtually *guaranteed* to do so in a series of decisions made without benefit of adversary presentation (whether we should GVR is rarely briefed, much less argued—as it has not been here) and announced without accompaniment of a judicial opinion (we almost never give reasons as the Court has done today). The need to afford equal treatment argues precisely *against* the "totality-of-the-circumstances" approach embraced by the Court, and in favor of a more modest but standardized GVR practice.

Henceforth, I shall vote for an order granting certiorari, vacating the judgment below without determination of the merits, and remanding for further consideration, only (1) where an intervening factor has arisen that has a legal bear-

ing upon the decision, (2) where, in a context not governed by *Michigan* v. *Long*, 463 U. S. 1032 (1983), clarification of the opinion below is needed to assure our jurisdiction, and (3) (in acknowledgment of established practice, though not necessarily in agreement with its validity) where the respondent or appellee confesses error in the judgment below. (I shall not necessarily note my dissent from GVR's where those conditions do not exist.) As I have discussed, neither of the present cases meets these standards. Accordingly, I respectfully dissent from today's orders and would deny both petitions.

Syllabus

STUTSON *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 94–8988. Decided January 8, 1996

The District Court held that petitioner Stutson's untimely appeal from his federal conviction and prison sentence was not the result of excusable neglect within the meaning of Federal Rule of Appellate Procedure 4(b) because his lawyer's office mailed his notice of appeal so that it arrived one working day late and at the Court of Appeals rather than at the District Court. The court's opinion did not advert to this Court's holding in *Pioneer Investment Services Co.* v. *Brunswick Associates Ltd. Partnership*, 507 U. S. 380, that, in some circumstances, a party's inadvertent failure to file a proof of claim in a timely manner in bankruptcy proceedings is excusable neglect under the bankruptcy rules. On appeal, the Government argued that *Pioneer* did not apply to the Rule 4(b) criminal appeal context, and the Eleventh Circuit dismissed the appeal without hearing oral argument or writing an opinion. In response to Stutson's certiorari petition, the Government has reversed its position, adopting the view of six Courts of Appeals that the *Pioneer* standard applies in Rule 4 cases.

Held: Using the analysis set forth in *Lawrence* v. *Chater*, *ante*, p. 163 *(per curiam)*, the particularities of this case merit an order granting the petition for certiorari, vacating the judgment below, and remanding the case (GVR). There appears to be a reasonable probability that the Eleventh Circuit will reach a different conclusion on remand, and the equities clearly favor a GVR order. The exceptional combination of circumstances here—the Government has repudiated the position that it advanced below; the only opinion below did not consider the import of a recent Supreme Court precedent which both parties now agree applies; the Eleventh Circuit summarily affirmed that decision; all six Courts of Appeals that have addressed the applicability of *Pioneer* have concluded that it applies to Rule 4 cases; and Stutson is in jail having, through no fault of his own, had no plenary consideration of his appeal—presents ample justification for the order. Here, as in *Lawrence*, a GVR order guarantees Stutson full and fair consideration of his rights in light of all pertinent considerations, and is also satisfactory to the Government. The order both promotes fairness and respects the Eleventh Circuit's dignity by enabling it to consider potentially relevant decisions and arguments that were not previously before it.

Certiorari granted; vacated and remanded.

PER CURIAM.

Our *per curiam* opinion issued today in a civil case, *Lawrence* v. *Chater*, *ante*, p. 163; contains a general discussion of the considerations that properly influence this Court in deciding whether to grant a petition for certiorari, vacate the judgment below, and remand the case (GVR) for further consideration in light of potentially pertinent matters which it appears that the lower court may not have considered. Here, we apply that analysis to a criminal case, again finding that the particularities of the case before us merit a GVR.

Stutson, the petitioner in this case, is currently serving a federal prison sentence of 292 months for cocaine possession. He has had no appellate review of his legal arguments against conviction and sentence. The District Court held that his appeal was untimely and that the untimeliness was not the result of "excusable neglect" within the meaning of Rule 4(b) of the Federal Rules of Appellate Procedure, because his lawyer's office mailed his notice of appeal so that it arrived one working day late for the 10-day deadline, and at the Court of Appeals, when it should have been sent to the District Court. The District Court's opinion did not advert to our decision in *Pioneer Investment Services Co.* v. *Brunswick Associates Ltd. Partnership*, 507 U. S. 380 (1993), rendered one day before Stutson's brief was due in the District Court and not cited in the briefs before that court. In *Pioneer*, we held that a party could in some circumstances rely on his attorney's inadvertent failure to file a proof of claim in a timely manner in bankruptcy proceedings as "excusable neglect" under the bankruptcy rules.

Stutson appealed the District Court's ruling. In their briefs to the Court of Appeals for the Eleventh Circuit, the parties disputed the applicability of *Pioneer*'s liberal understanding of "excusable neglect" to the Rule 4(b) criminal appeal context, the Government contending that it applied only in bankruptcy cases. The Court of Appeals affirmed the District Court and dismissed Stutson's appeal without

hearing oral argument or writing an opinion. Now, in his response to Stutson's petition for certiorari, the Solicitor General has reversed the Government's position. This change of position follows the unanimous view of the six Courts of Appeals that, unlike the Eleventh Circuit in this case, have expressly addressed this new and important issue, and have held that the *Pioneer* standard applies in Rule 4 cases. See *United States* v. *Clark*, 51 F. 3d 42, 44 (CA5 1995) (Rule 4(b)); *United States* v. *Hooper*, 9 F. 3d 257, 259 (CA2 1993) (same); *Chanute* v. *Williams Natural Gas Co.*, 31 F. 3d 1041, 1045–1046 (CA10 1994) (Rule 4(a)(5)), cert. denied, 513 U. S. 1191 (1995); *Fink* v. *Union Central Life Ins. Co.*, 65 F. 3d 722 (CA8 1995) (same); *Reynolds* v. *Wagner*, 55 F. 3d 1426, 1429 (CA9) (same), cert. denied, *post*, p. 932; *Virella-Nieves* v. *Briggs & Stratton Corp.*, 53 F. 3d 451, 454, n. 3 (CA1 1995) (same).*

In sum, this is a case where (1) the prevailing party below, the Government, has now repudiated the legal position that it advanced below; (2) the only opinion below did not consider the import of a recent Supreme Court precedent that both parties now agree applies; (3) the Court of Appeals summarily affirmed that decision; (4) all six Courts of Appeals that have addressed the applicability of the Supreme Court decision that the District Court did not apply in this case have concluded that it applies to Rule 4 cases; and (5) the petitioner is in jail having, through no fault of his own, had no plenary consideration of his appeal. While "we 'should [not] mechanically accept any suggestion from the Solicitor General that a decision rendered in favor of the Government by a United States Court of Appeals was in error,'" *Lawrence*, *ante*, at 171 (quoting *Mariscal* v. *United States*, 449 U. S. 405, 406 (1981) (REHNQUIST, J., dissenting)), this excep-

**Clark*, *Fink*, *Reynolds*, and *Virella-Nieves* were decided after the Court of Appeals in this case denied Stutson's petition for rehearing. *Chanute* and *Hooper* were decided after the District Court's decision in this case but before that of the Court of Appeals.

tional combination of circumstances presents ample justification for a GVR order. It appears to us that there is at least a reasonable probability that the Court of Appeals will reach a different conclusion on remand, and the equities clearly favor a GVR order.

If the Court of Appeals here, in its summary affirmance, did not rely on the Government's primary argument and the lower court's basic premise—that *Pioneer* did not apply—it does not seem to us that we place an excessive burden on it, relative to Stutson's liberty and due process interests, by inviting it to clarify its ambiguous ruling. A contrary approach would risk effectively immunizing summary dispositions by courts of appeals from our review, since it is rare that their basis for decision is entirely unambiguous. See *Lawrence*, *ante*, at 170 (discussing *Netherland* v. *Tuggle*, 515 U. S. 951 (1995)). If, on the other hand, the Court of Appeals did not fully consider the applicability of *Pioneer*, or if it concluded that *Pioneer* does not apply under Rule 4, it might well conclude that while "[t]he law is the law," *ante*, at 184 (SCALIA, J., dissenting), the combination of the Government's change of position and the subsequent contrary decisions of four other Courts of Appeals shed light on the law applicable to this case. If it continues to conclude that *Pioneer* does not apply, it will be useful for us to have the benefit of its views so that we may resolve the resulting conflict between the Circuits.

Finally, it is not insignificant that this is a criminal case. When a litigant is subject to the continuing coercive power of the Government in the form of imprisonment, our legal traditions reflect a certain solicitude for his rights, to which the important public interests in judicial efficiency and finality must occasionally be accommodated. We have previously refused to allow technicalities that caused no prejudice to the prosecution to preclude a remand under 28 U. S. C. § 2106 (1988 ed.) "in the interests of justice." *Wood*

v. *Georgia*, 450 U. S. 261, 265, n. 5 (1981). And procedural accommodations to prisoners are a familiar aspect of our jurisprudence. See, *e. g.*, 28 U. S. C. § 2255 (1988 ed.) (habeas review in spite of an adverse final appellate decision); *Evitts* v. *Lucey*, 469 U. S. 387 (1985) (relief for ineffective assistance of retained counsel on appeal); *Schacht* v. *United States*, 398 U. S. 58, 63–64 (1970) (unlike in civil cases, time limits for petitions for certiorari in criminal cases are not jurisdictional). To the extent that the dissent suggests that it is inconsistent with our "traditional practice," *ante*, at 178 (opinion of SCALIA, J.), to call upon a Court of Appeals to reconsider its dismissal of a prisoner's appeal because his lawyer filed it one day late, in circumstances where the Court of Appeals' decision may have been premised on the assumption, unanimously rejected by other Courts of Appeals, that more stringent rules as to filing deadlines apply to prisoners than to creditors filing claims in a bankruptcy proceeding, we must respectfully disagree.

Judicial efficiency and finality are important values, and our GVR power should not be exercised for "[m]ere convenience," cf. *Adams* v. *United States ex rel. McCann*, 317 U. S. 269, 274 (1942). "But dry formalism should not sterilize procedural resources which Congress has made available to the federal courts." *Ibid.* In this case, as in *Lawrence* v. *Chater*, a GVR order guarantees to the petitioner full and fair consideration of his rights in light of all pertinent considerations, and is also satisfactory to the Government. In this case, as in *Lawrence*, a GVR order both promotes fairness and respects the dignity of the Court of Appeals by enabling it to consider potentially relevant decisions and arguments that were not previously before it.

Accordingly, the motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for

further consideration in light of *Pioneer Investment Services Co.* v. *Brunswick Associates Ltd. Partnership*, 507 U. S. 380 (1993).

[For concurring opinion of JUSTICE STEVENS, see *ante*, p. 175; for dissenting opinion of THE CHIEF JUSTICE, see *ante*, p. 176; for dissenting opinion of JUSTICE SCALIA, see *ante*, p. 177.]

Syllabus

YAMAHA MOTOR CORP., U. S. A., ET AL. *v.* CALHOUN ET AL., INDIVIDUALLY AND AS ADMINISTRATORS OF THE ESTATE OF CALHOUN, DECEASED

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 94–1387. Argued October 31, 1995—Decided January 9, 1996

Twelve-year-old Natalie Calhoun was killed in a collision in territorial waters off Puerto Rico while riding a jet ski manufactured and distributed by petitioners Yamaha. Natalie's parents, respondents Calhoun, filed this federal diversity and admiralty action for damages against Yamaha, invoking Pennsylvania's wrongful-death and survival statutes. The District Court agreed with Yamaha that the federal maritime wrongful-death action recognized in *Moragne* v. *States Marine Lines, Inc.*, 398 U. S. 375, controlled to the exclusion of state law. In its order presenting the matter for immediate interlocutory appeal pursuant to 28 U. S. C. § 1292(b), the District Court certified questions of law concerning the recoverability of particular items of damages under *Moragne*. The Third Circuit granted interlocutory review, but the panel to which the appeal was assigned did not reach the questions presented in the certified order. Instead, the panel addressed and resolved an anterior issue; it held that state remedies remain applicable in accident cases of this type and have not been displaced by the federal maritime wrongful-death action recognized in *Moragne*.

Held:

1. Section 1292(b) provides that "[w]hen a district judge, in making . . . an order not otherwise appealable . . . , shall be of the opinion that *such order* involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal *from the order* may materially advance the ultimate termination of the litigation, he shall so state in writing in such order," and specifies that "the Court of Appeals . . . may thereupon, in its discretion, permit an appeal to be taken *from such order*" (emphasis added). As that text indicates, the court of appeals can exercise interlocutory jurisdiction over any question fairly included within the *order* certified by the district court, and is not limited to the particular questions of law therein formulated. Pp. 204–205.

2. In maritime wrongful-death cases in which no federal statute specifies the appropriate relief and the decedent was not a seaman, longshore

worker, or person otherwise engaged in a maritime trade, state remedies remain applicable and have not been displaced by the wrongful-death action recognized in *Moragne*. Pp. 206–216.

(a) In *The Harrisburg*, 119 U. S. 199, this Court ruled that the general maritime law (a species of judge-made federal common law) did not afford a cause of action for wrongful death. Federal admiralty courts, prior to *Moragne*, tempered the harshness of *The Harrisburg*'s rule by allowing recovery under state wrongful-death and survival statutes in maritime accident cases. See, *e. g.*, *Western Fuel Co.* v. *Garcia*, 257 U. S. 233. Such state laws proved an adequate supplement to federal maritime law, until a series of this Court's decisions transformed the maritime doctrine of unseaworthiness into a rule making shipowners strictly liable to seamen injured by the owners' failure to supply safe ships. See, *e. g.*, *Mahnich* v. *Southern S. S. Co.*, 321 U. S. 96. By the time *Moragne* was decided, claims premised on unseaworthiness had become "the principal vehicle for recovery" by seamen and other maritime workers injured or killed in the course of their employment. 398 U. S., at 399. The disparity between the unseaworthiness doctrine's strict liability standard and negligence-based state wrongful-death statutes prompted the *Moragne* Court, *id.*, at 409, to overrule *The Harrisburg* and hold that an action "lie[s] under general maritime law for death caused by violation of maritime duties." Pp. 206–209.

(b) This Court rejects Yamaha's argument that *Moragne*'s wrongful-death action covers the waters, creating a uniform federal maritime remedy for all deaths occurring in state territorial waters, and ousting all state remedies previously available to supplement general maritime law. The uniformity concerns that prompted the *Moragne* Court to overrule *The Harrisburg* related to ships and the workers who serve them, and to the frequent unavailability of unseaworthiness, a distinctively maritime substantive concept, as a basis of liability under state law. See 398 U. S., at 395–396. The concerns underlying *Moragne* were of a different order than those invoked by Yamaha. Notably, Yamaha seeks the contraction of remedies, not the extension of relief in light of the "humane and liberal" character of admiralty proceedings recognized in *Moragne*. See *id.*, at 387. The *Moragne* Court tied its petitioner's unseaworthiness plea to a federal right-of-action anchor, but left in place the negligence claim she had stated under Florida's law, and thus showed no hostility to concurrent application of state wrongful-death statutes that might provide a more generous remedy. Cf. *Sun Ship, Inc.* v. *Pennsylvania*, 447 U. S. 715, 724. No congressionally prescribed, comprehensive tort recovery regime prevents such enlargement of damages here. See *Miles* v. *Apex Marine Corp.*, 498 U. S. 19, 30–36. The only relevant congressional disposition, the Death on

the High Seas Act (DOHSA), states that "[t]he provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter." 46 U. S. C. App. § 767. This statement, by its terms, simply stops DOHSA from displacing state law in territorial waters. See, *e. g., Miles, supra,* at 25. Taking into account what Congress sought to achieve, however, the Court preserves the application of state statutes to deaths within territorial waters. Pp. 209–216.

40 F. 3d 622, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court.

James W. Bartlett III argued the cause for petitioners. With him on the briefs were *Jonathan Dryer, William R. Hoffman,* and *Francis P. Manchisi.*

Paul A. Engelmayer argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Days, Assistant Attorney General Hunger, Deputy Solicitor General Bender, David V. Hutchinson,* and *Edward Himmelfarb.*

Alan B. Morrison argued the cause for respondents. With him on the brief were *William J. Taylor* and *Timothy R. Chapin.**

JUSTICE GINSBURG delivered the opinion of the Court.

Twelve-year-old Natalie Calhoun was killed in a jet ski accident on July 6, 1989. At the time of her death, she was vacationing with family friends at a beach-front resort in Puerto Rico. Alleging that the jet ski was defectively de-

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*Briefs of *amici curiae* urging reversal were filed for the American Steamship Owners Mutual Protection and Indemnity Association, Inc., et al. by *Michael F. Sturley;* for the Maritime Law Association of the United States by *Warren J. Marwedel, Dennis Minichello,* and *Chester D. Hooper;* and for the National Marine Manufacturers Association by *George J. Koelzer* and *Joshua S. Force.*

Briefs of *amici curiae* urging affirmance were filed for the Association of Trial Lawyers of America by *Ross Diamond III* and *Pamela Liapakis;* and for the National Conference of State Legislatures et al. by *Richard Ruda* and *James I. Crowley.*

signed or made, Natalie's parents sought to recover from the manufacturer pursuant to state survival and wrongful-death statutes. The manufacturer contended that state remedies could not be applied because Natalie died on navigable waters; federal, judge-declared maritime law, the manufacturer urged, controlled to the exclusion of state law.

Traditionally, state remedies have been applied in accident cases of this order—maritime wrongful-death cases in which no federal statute specifies the appropriate relief and the decedent was not a seaman, longshore worker, or person otherwise engaged in a maritime trade. We hold, in accord with the United States Court of Appeals for the Third Circuit, that state remedies remain applicable in such cases and have not been displaced by the federal maritime wrongful-death action recognized in *Moragne* v. *States Marine Lines, Inc.*, 398 U. S. 375 (1970).

I

Natalie Calhoun, the 12-year-old daughter of respondents Lucien and Robin Calhoun, died in a tragic accident on July 6, 1989. On vacation with family friends at a resort hotel in Puerto Rico, Natalie had rented a "WaveJammer" jet ski manufactured by Yamaha Motor Company, Ltd., and distributed by Yamaha Motor Corporation, U. S. A. (collectively, Yamaha), the petitioners in this case. While riding the WaveJammer, Natalie slammed into a vessel anchored in the waters off the hotel frontage, and was killed.

The Calhouns, individually and in their capacities as administrators of their daughter's estate, sued Yamaha in the United States District Court for the Eastern District of Pennsylvania. Invoking Pennsylvania's wrongful-death and survival statutes, 42 Pa. Cons. Stat. §§ 8301–8302 (1982 and Supp. 1995), the Calhouns asserted several bases for recovery (including negligence, strict liability, and breach of implied warranties), and sought damages for lost future earnings, loss of society, loss of support and services, and funeral expenses, as well as punitive damages. They grounded fed-

eral jurisdiction on both diversity of citizenship, 28 U. S. C. § 1332,[1] and admiralty, 28 U. S. C. § 1333.

Yamaha moved for partial summary judgment, arguing that the federal maritime wrongful-death action this Court recognized in *Moragne* v. *States Marine Lines, Inc.*, 398 U. S. 375 (1970), provided the exclusive basis for recovery, displacing all remedies afforded by state law. Under *Moragne*, Yamaha contended, the Calhouns could recover as damages only Natalie's funeral expenses. The District Court agreed with Yamaha that *Moragne*'s maritime death action displaced state remedies; the court held, however, that loss of society and loss of support and services were compensable under *Moragne*.

Both sides asked the District Court to present questions for immediate interlocutory appeal pursuant to 28 U. S. C. § 1292(b). The District Court granted the parties' requests, and in its § 1292(b) certifying order stated:

> "Natalie Calhoun, the minor child of plaintiffs Lucien B. Calhoun and Robin L. Calhoun, who are Pennsylvania residents, was killed in an accident not far off shore in Puerto Rico, in the territorial waters of the United States. Plaintiffs have brought a diversity suit against, *inter alia*, defendants Yamaha Motor Corporation, U. S. A. and Yamaha Motor Co., Ltd. The counts of the complaint directed against the Yamaha defendants allege that the accident was caused by a defect or defects in a Yamaha jet ski which Natalie Calhoun had rented and was using at the time of the fatal accident. Those counts sound in negligence, in strict liability, and in implied warranties of merchantability and fitness. The district court has concluded that admiralty jurisdiction attaches to these several counts and that they

[1] The Calhouns are citizens of Pennsylvania. Yamaha Motor Corporation, U. S. A., is incorporated and has its principal place of business in California; Yamaha Motor Company, Ltd., is incorporated and has its principal place of business in Japan.

> constitute a federal maritime cause of action. The questions of law certified to the Court of Appeals are whether, pursuant to such a maritime cause of action, plaintiffs may seek to recover (1) damages for the loss of the society of their deceased minor child, (2) damages for the loss of their child's future earnings, and (3) punitive damages." App. to Pet. for Cert. A–78.

Although the Court of Appeals granted the interlocutory review petition, the panel to which the appeal was assigned did not reach the questions presented in the certified order, for it determined that an anterior issue was pivotal. The District Court, as just recounted, had concluded that any damages the Calhouns might recover from Yamaha would be governed exclusively by federal maritime law. But the Third Circuit panel questioned that conclusion and inquired whether state wrongful-death and survival statutes supplied the remedial prescriptions for the Calhouns' complaint. The appellate panel asked whether the state remedies endured or were "displaced by a federal maritime rule of decision." 40 F. 3d 622, 624 (1994). Ultimately, the Court of Appeals ruled that state-law remedies apply in this case. *Id.*, at 644.

II

In our order granting certiorari, we asked the parties to brief a preliminary question: "Under 28 U. S. C. § 1292(b), can the courts of appeals exercise jurisdiction over any question that is included within the order that contains the controlling question of law identified by the district court?" 514 U. S. 1126 (1995). The answer to that question, we are satisfied, is yes.

Section 1292(b) provides, in pertinent part:

> "When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that *such order* involves a controlling question of law as to which there is substantial ground

> for difference of opinion and that an immediate appeal *from the order* may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals . . . may thereupon, in its discretion, permit an appeal to be taken *from such order*, if application is made to it within ten days after the entry of the order." (Emphasis added.)

As the text of § 1292(b) indicates, appellate jurisdiction applies to the *order* certified to the court of appeals, and is not tied to the particular question formulated by the district court. The court of appeals may not reach beyond the certified order to address other orders made in the case. *United States* v. *Stanley*, 483 U. S. 669, 677 (1987). But the appellate court may address any issue fairly included within the certified order because "it is the *order* that is appealable, and not the controlling question identified by the district court." 9 J. Moore & B. Ward, Moore's Federal Practice ¶ 110.25[1], p. 300 (2d ed. 1995). See also 16 C. Wright, A. Miller, E. Cooper, & E. Gressman, Federal Practice and Procedure § 3929, pp. 144–145 (1977) ("[T]he court of appeals may review the entire order, either to consider a question different than the one certified as controlling or to decide the case despite the lack of any identified controlling question."); Note, Interlocutory Appeals in the Federal Courts Under 28 U. S. C. § 1292(b), 88 Harv. L. Rev. 607, 628–629 (1975) ("scope of review [includes] all issues material to the order in question").

We therefore proceed to the issue on which certiorari was granted: Does the federal maritime claim for wrongful death recognized in *Moragne* supply the exclusive remedy in cases involving the deaths of nonseafarers[2] in territorial waters?

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[2] By "nonseafarers," we mean persons who are neither seamen covered by the Jones Act, 46 U. S. C. App. § 688 (1988 ed.), nor longshore workers covered by the Longshore and Harbor Workers' Compensation Act, 33 U. S. C. § 901 *et seq.*

III

Because this case involves a watercraft collision on navigable waters, it falls within admiralty's domain. See *Sisson* v. *Ruby*, 497 U. S. 358, 361–367 (1990); *Foremost Ins. Co.* v. *Richardson*, 457 U. S. 668, 677 (1982). "With admiralty jurisdiction," we have often said, "comes the application of substantive admiralty law." *East River S. S. Corp.* v. *Transamerica Delaval Inc.*, 476 U. S. 858, 864 (1986). The exercise of admiralty jurisdiction, however, "does not result in automatic displacement of state law." *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U. S. 527, 545 (1995). Indeed, prior to *Moragne*, federal admiralty courts routinely applied state wrongful-death and survival statutes in maritime accident cases.[3] The question before us is whether *Moragne* should be read to stop that practice.

Our review of maritime wrongful-death law begins with *The Harrisburg*, 119 U. S. 199 (1886), where we held that the general maritime law (a species of judge-made federal common law) did not afford a cause of action for wrongful death. The *Harrisburg* Court said that wrongful-death actions are statutory and may not be created by judicial decree. The Court did not question the soundness of this view, or examine the historical justifications that account for it. Instead, the Court merely noted that common law in the United States, like the common law of England, did not allow recovery "for an injury which results in death," *id.*, at 204 (internal quotation marks omitted), and that no country had "adopted a different rule on this subject for the sea from that which it maintains on the land," *id.*, at 213. The Court did not consider itself free to chart a different course by crafting a judge-made wrongful-death action under our maritime law.

Federal admiralty courts tempered the harshness of *The Harrisburg*'s rule by allowing recovery under state

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[3] Throughout this opinion, for economy, we use the term wrongful-death remedies or statutes to include survival statutes.

wrongful-death statutes. See, *e. g.*, *The Hamilton*, 207 U. S. 398 (1907); *The City of Norwalk*, 55 F. 98 (SDNY 1893).[4] We reaffirmed this practice in *Western Fuel Co.* v. *Garcia*, 257 U. S. 233 (1921), by holding that California's wrongful-death statute governed a suit brought by the widow of a maritime worker killed in that State's territorial waters. Though we had generally refused to give effect to state laws regarded as inconsonant with the substance of federal maritime law, we concluded that extending state wrongful-death statutes to fatal accidents in territorial waters was compatible with substantive maritime policies: "The subject is maritime and local in character and the specified modification of or supplement to the rule applied in admiralty courts . . . will not work material prejudice to the characteristic features of the general maritime law, nor interfere with the proper harmony and uniformity of that law in its international and interstate relations." *Id.*, at 242.[5] On similar reasoning, we also held that state survival statutes may be applied in cases arising out of accidents in territorial waters. See *Just* v. *Chambers*, 312 U. S. 383, 391–392 (1941).

State wrongful-death statutes proved an adequate supplement to federal maritime law, until a series of this Court's

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[4] Congress also mitigated the impact of *The Harrisburg* by enacting two statutes affording recovery for wrongful death. In 1920, Congress passed the Death on the High Seas Act (DOHSA), 46 U. S. C. App. § 761 *et seq.* (1988 ed.), which provides a federal claim for wrongful death occurring more than three nautical miles from the shore of any State or Territory. In that same year, Congress also passed the Jones Act, 46 U. S. C. App. § 688 (1988 ed.), which provides a wrongful-death claim to the survivors of seamen killed in the course of their employment, whether on the high seas or in territorial waters.

[5] Indeed, years before *The Harrisburg*, this Court rendered a pathmarking decision, *Steamboat Co.* v. *Chase*, 16 Wall. 522 (1873). In *Steamboat*, the Court upheld, under the "saving-to-suitors" proviso of the Judiciary Act of 1789 (surviving currently in 28 U. S. C. § 1333(1)), a state court's application of the State's wrongful-death statute to a fatality caused by a collision in territorial waters between defendants' steamboat and a sailboat in which plaintiff's decedent was passing.

decisions transformed the maritime doctrine of unseaworthiness into a strict-liability rule. Prior to 1944, unseaworthiness "was an obscure and relatively little used" liability standard, largely because "a shipowner's duty at that time was only to use due diligence to provide a seaworthy ship." *Miles* v. *Apex Marine Corp.*, 498 U. S. 19, 25 (1990) (internal quotation marks omitted). See also *Moragne*, 398 U. S., at 398–399. *Mahnich* v. *Southern S. S. Co.*, 321 U. S. 96 (1944), however, notably expanded a shipowner's liability to injured seamen by imposing a nondelegable duty "to furnish a vessel and appurtenances reasonably fit for their intended use." *Mitchell* v. *Trawler Racer, Inc.*, 362 U. S. 539, 550 (1960). The duty imposed was absolute; failure to supply a safe ship resulted in liability "irrespective of fault and irrespective of the intervening negligence of crew members." *Miles*, 498 U. S., at 25. The unseaworthiness doctrine thus became a "species of liability without fault," *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85, 94 (1946), and soon eclipsed ordinary negligence as the primary basis of recovery when a seafarer was injured or killed. *Miles*, 498 U. S., at 25–26.[6]

The disparity between the unseaworthiness doctrine's strict-liability standard and negligence-based state wrongful-death statutes figured prominently in our landmark *Moragne* decision. Petsonella Moragne, the widow of a longshore worker killed in Florida's territorial waters, brought suit under Florida's wrongful-death and survival statutes, alleging both negligence and unseaworthiness.

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[6] The Court extended the duty to provide a seaworthy ship, once owed only to seamen, to longshore workers in *Seas Shipping Co.* v. *Sieracki*, 328 U. S. 85 (1946). Congress effectively overruled this extension in its 1972 amendments to the Longshore and Harbor Workers' Compensation Act, 33 U. S. C. § 901 *et seq.* See § 905(b). We have thus far declined to extend the duty further. See *Kermarec* v. *Compagnie Generale Transatlantique*, 358 U. S. 625, 629 (1959) (unseaworthiness doctrine inapplicable to invitee aboard vessel).

The District Court dismissed the claim for wrongful death based on unseaworthiness, citing this Court's decision in *The Tungus* v. *Skovgaard*, 358 U. S. 588 (1959). There, a sharply divided Court held that "when admiralty adopts a State's right of action for wrongful death, it must enforce the right as an integrated whole, with whatever conditions and limitations the creating State has attached." *Id.*, at 592. Thus, in wrongful-death actions involving fatalities in territorial waters, state statutes provided the standard of liability as well as the remedial regime. Because the Florida Supreme Court had previously held that Florida's wrongful-death statute did not encompass unseaworthiness as a basis of liability, the Court of Appeals affirmed the dismissal of Moragne's unseaworthiness claim. See *Moragne*, 398 U. S., at 377.

The Court acknowledged in *Moragne* that *The Tungus* had led to considerable uncertainty over the role state law should play in remedying deaths in territorial waters, but concluded that "the primary source of the confusion is not to be found in *The Tungus*, but in *The Harrisburg*." 398 U. S., at 378. Upon reexamining the soundness of *The Harrisburg*, we decided that its holding, "somewhat dubious even when rendered, is such an unjustifiable anomaly in the present maritime law that it should no longer be followed." 398 U. S., at 378. Accordingly, the Court overruled *The Harrisburg* and held that an action "lie[s] under general maritime law for death caused by violation of maritime duties." 398 U. S., at 409.

IV

Yamaha argues that *Moragne*—despite its focus on "maritime duties" owed to maritime workers—covers the waters, creating a uniform federal maritime remedy for all deaths occurring in state territorial waters, and ousting all previously available state remedies. In Yamaha's view, state remedies can no longer supplement general maritime law

(as they routinely did before *Moragne*), because *Moragne* launched a solitary federal scheme.[7] Yamaha's reading of *Moragne* is not without force; in several contexts, we have recognized that vindication of maritime policies demanded uniform adherence to a federal rule of decision, with no leeway for variation or supplementation by state law. See, *e. g., Kossick* v. *United Fruit Co.*, 365 U. S. 731, 742 (1961) (federal maritime rule validating oral contracts precluded application of state Statute of Frauds); *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406, 409 (1953) (admiralty's comparative negligence rule barred application of state contributory negligence rule); *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, 248–249 (1942) (federal maritime rule allocating burden of proof displaced conflicting state rule).[8] In addition, Ya-

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[7] If *Moragne*'s wrongful-death action did not extend to nonseafarers like Natalie, one could hardly argue that *Moragne* displaced the state-law remedies the Calhouns seek. Lower courts have held that *Moragne*'s wrongful-death action extends to nonseafarers. See, *e. g., Sutton* v. *Earles*, 26 F. 3d 903 (CA9 1994) (recreational boater); *Wahlstrom* v. *Kawasaki Heavy Industries, Ltd.*, 4 F. 3d 1084 (CA2 1993) (jet skier), cert. denied, 510 U. S. 1114 (1994). We assume, for purposes of this decision, the correctness of that position. Similarly, as in prior encounters, we assume without deciding that *Moragne* also provides a survival action. See *Miles* v. *Apex Marine Corp.*, 498 U. S. 19, 34 (1990). The question we confront is not what *Moragne* added to the remedial arsenal in maritime cases, but what, if anything, it removed from admiralty's stock.

[8] The federal cast of admiralty law, we have observed, means that "state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system[,] [b]ut this limitation still leaves the States a wide scope." *Romero* v. *International Terminal Operating Co.*, 358 U. S. 354, 373 (1959). Our precedent does not precisely delineate that scope. As we recently acknowledged, "[i]t would be idle to pretend that the line separating permissible from impermissible state regulation is readily discernible in our admiralty jurisprudence." *American Dredging Co.* v. *Miller*, 510 U. S. 443, 452 (1994). We attempt no grand synthesis or reconciliation of our precedent today, but confine our inquiry to the modest question whether it was *Moragne*'s design to terminate recourse to state remedies when nonseafarers meet death in territorial waters.

maha correctly points out that uniformity concerns informed our decision in *Moragne*.

The uniformity concerns that prompted us to overrule *The Harrisburg*, however, were of a different order than those invoked by Yamaha. *Moragne* did not reexamine the soundness of *The Harrisburg* out of concern that state monetary awards in maritime wrongful-death cases were excessive, or that variations in the remedies afforded by the States threatened to interfere with the harmonious operation of maritime law. Variations of this sort had long been deemed compatible with federal maritime interests. See *Western Fuel*, 257 U. S., at 242. The uniformity concern that drove our decision in *Moragne* related, instead, to the availability of unseaworthiness as a basis of liability.

By 1970, when *Moragne* was decided, claims premised on unseaworthiness had become "the principal vehicle for recovery" by seamen and other maritime workers injured or killed in the course of their employment. *Moragne*, 398 U. S., at 399. But with *The Harrisburg* in place, troubling anomalies had developed that many times precluded the survivors of maritime workers from recovering for deaths caused by an unseaworthy vessel. The *Moragne* Court identified three anomalies and concluded they could no longer be tolerated.

First, the Court noted that "within territorial waters, identical conduct violating federal law (here the furnishing of an unseaworthy vessel) produces liability if the victim is merely injured, but frequently not if he is killed." 398 U. S., at 395. This occurred because in nonfatal injury cases, state substantive liability standards were superseded by federal maritime law, see *Kermarec* v. *Compagnie Generale Transatlantique*, 358 U. S. 625, 628 (1959); *Pope & Talbot*, 346 U. S., at 409, which provided for maritime worker recovery based on unseaworthiness. But if the same worker met death in the territorial waters of a State whose wrongful-death statute did not encompass unseaworthiness (as was the

case in *Moragne* itself), the survivors could not proceed under that generous standard of liability. See *The Tungus*, 358 U. S., at 592–593.

Second, we explained in *Moragne* that "identical breaches of the duty to provide a seaworthy ship, resulting in death, produce liability outside the three-mile limit . . . but not within the territorial waters of a State whose local statute excludes unseaworthiness claims." 398 U. S., at 395. This occurred because survivors of a maritime worker killed on the high seas could sue for wrongful death under the Death on the High Seas Act (DOHSA), 46 U. S. C. App. § 761 *et seq.* (1988 ed.), which encompasses unseaworthiness as a basis of liability. *Moragne*, 398 U. S., at 395 (citing *Kernan* v. *American Dredging Co.*, 355 U. S. 426, 430, n. 4 (1958)).

Finally, we pointed out that "a true seaman [a member of a ship's company] . . . is provided no remedy for death caused by unseaworthiness within territorial waters, while a longshoreman, to whom the duty of seaworthiness was extended only because he performs work traditionally done by seamen, does have such a remedy when allowed by a state statute." 398 U. S., at 395–396. This anomaly stemmed from the Court's rulings in *Lindgren* v. *United States*, 281 U. S. 38 (1930), and *Gillespie* v. *United States Steel Corp.*, 379 U. S. 148 (1964), that the Jones Act, 46 U. S. C. App. § 688 (1988 ed.), which provides only a negligence-based claim for the wrongful death of seamen, precludes any state remedy, even one accommodating unseaworthiness. As a result, at the time *Moragne* was decided, the survivors of a longshore worker killed in the territorial waters of a State whose wrongful-death statute incorporated unseaworthiness could sue under that theory, but the survivors of a similarly situated seaman could not.[9]

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[9] As noted earlier, unseaworthiness recovery by longshore workers was terminated by Congress in its 1972 amendments to the Longshore and Harbor Workers' Compensation Act, 33 U. S. C. § 901 *et seq.* See § 905(b).

The anomalies described in *Moragne* relate to ships and the workers who serve them, and to a distinctly maritime substantive concept—the unseaworthiness doctrine. The Court surely meant to "assure uniform vindication of federal policies," 398 U. S., at 401, with respect to the matters it examined. The law as it developed under *The Harrisburg* had forced on the States more than they could bear—the task of "provid[ing] the sole remedy" in cases that did not involve "traditional common-law concepts," but "concepts peculiar to maritime law." 398 U. S., at 401, n. 15 (internal quotation marks omitted). Discarding *The Harrisburg* and declaring a wrongful-death right of action under general maritime law, the Court concluded, would "remov[e] the tensions and discrepancies" occasioned by the need "to accommodate state remedial statutes to exclusively maritime substantive concepts." 398 U. S., at 401.[10]

Moragne, in sum, centered on the extension of relief, not on the contraction of remedies. The decision recalled that "'it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules.'" *Id.*, at 387 (quoting *The Sea Gull*, 21 F. Cas. 909, 910 (No. 12,578) (CC Md. 1865) (Chase, C. J.)). The Court tied Petsonella Moragne's plea based on the unseaworthiness

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[10] The Court might have simply overruled *The Tungus*, see *supra*, at 209, thus permitting plaintiffs to rely on federal liability standards to obtain state wrongful-death remedies. The petitioner in *Moragne*, widow of a longshore worker, had urged that course when she sought certiorari. See *Moragne* v. *States Marine Lines, Inc.*, 398 U. S. 375, 378, n. 1 (1970). But training *Moragne* solely on *The Tungus* would have left untouched the survivors of seamen, who remain blocked by the Jones Act from pursuing state wrongful-death claims—whether under a theory of negligence or unseaworthiness. See *Gillespie* v. *United States Steel Corp.*, 379 U. S. 148, 154–155 (1964). Thus, nothing short of a federal maritime right of action for wrongful death could have achieved uniform access by seafarers to the unseaworthiness doctrine, the Court's driving concern in *Moragne*. See 398 U. S., at 396, n. 12.

of the vessel to a federal right-of-action anchor,[11] but notably left in place the negligence claim she had stated under Florida's law. See 398 U. S., at 376–377.[12]

Our understanding of *Moragne* accords with that of the Third Circuit, which Judge Becker set out as follows:

> "*Moragne* . . . showed no hostility to concurrent application of state wrongful-death statutes. Indeed, to read into *Moragne* the idea that it was placing a ceiling on recovery for wrongful death, rather than a floor, is somewhat ahistorical. The *Moragne* cause of action was in many respects a gap-filling measure to ensure that seamen (and their survivors) would all be treated alike. The 'humane and liberal' purpose underlying the general maritime remedy of *Moragne* was driven by the idea that survivors of seamen killed in state territorial waters should not have been barred from recovery simply because the tort system of the particular state in which a seaman died did not incorporate special maritime doctrines. It is difficult to see how this purpose can be taken as an intent to preclude the operation of state laws that do supply a remedy." 40 F. 3d, at 641–642 (citation omitted).

We have reasoned similarly in *Sun Ship, Inc.* v. *Pennsylvania*, 447 U. S. 715 (1980), where we held that a State may apply its workers' compensation scheme to land-based injuries that fall within the compass of the Longshore and Har-

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[11] While unseaworthiness was the doctrine immediately at stake in *Moragne*, the right of action, as stated in the Court's opinion, is "for death caused by violation of maritime duties." *Id.*, at 409. See *East River S. S. Corp.* v. *Transamerica Delaval Inc.*, 476 U. S. 858, 865 (1986) (maritime law incorporates strict product liability); *Kermarec*, 358 U. S., at 630 (negligence). See also G. Gilmore & C. Black, The Law of Admiralty 368 (2d ed. 1975).

[12] *Moragne* was entertained by the Court of Appeals pursuant to a 28 U. S. C. § 1292(b) certification directed to the District Court's order dismissing the unseaworthiness claim. See 398 U. S., at 376.

bor Workers' Compensation Act, 33 U. S. C. § 901 *et seq.* See *Sun Ship*, 447 U. S., at 724 (a State's remedial scheme might be "more generous than federal law" but nevertheless could apply because Congress indicated no concern "about a disparity between adequate federal benefits and *superior* state benefits") (emphasis in original).[13]

When Congress has prescribed a comprehensive tort recovery regime to be uniformly applied, there is, we have generally recognized, no cause for enlargement of the damages statutorily provided. See *Miles*, 498 U. S., at 30–36 (Jones Act, rather than general maritime law, determines damages recoverable in action for wrongful death of seamen); *Offshore Logistics, Inc.* v. *Tallentire*, 477 U. S. 207, 232 (1986) (DOHSA, which limits damages to pecuniary losses, may not be supplemented by nonpecuniary damages under a state wrongful-death statute); *Mobil Oil Corp.* v. *Higginbotham*, 436 U. S. 618, 624–625 (1978) (DOHSA precludes damages for loss of society under general maritime law). But Congress has not prescribed remedies for the wrongful deaths of nonseafarers in territorial waters. See *Miles*, 498 U. S., at 31. There is, however, a relevant congressional disposition. Section 7 of DOHSA states: "The provisions of any State statute giving or regulating rights of action or remedies for death

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[13] Federal maritime law has long accommodated the States' interest in regulating maritime affairs within their territorial waters. See, *e. g.*, *Just* v. *Chambers*, 312 U. S. 383, 390 (1941) ("maritime law [is] not a complete and perfect system"; "a considerable body of municipal law . . . underlies . . . its administration"). States have thus traditionally contributed to the provision of environmental and safety standards for maritime activities. See, *e. g.*, *Askew* v. *American Waterways Operators, Inc.*, 411 U. S. 325 (1973) (oil pollution); *Huron Portland Cement Co.* v. *Detroit*, 362 U. S. 440 (1960) (air pollution); *Kelly* v. *Washington ex rel. Foss Co.*, 302 U. S. 1 (1937) (safety inspection); *Cooley* v. *Board of Wardens of Port of Philadelphia ex rel. Soc. for Relief of Distressed Pilots*, 12 How. 299 (1852) (pilotage regulation). Permissible state regulation, we have recognized, must be consistent with federal maritime principles and policies. See *Romero*, 358 U. S., at 373–374.

shall not be affected by this chapter." 46 U. S. C. App. § 767. This statement, by its terms, simply stops DOHSA from displacing state law in territorial waters. See *Miles*, 498 U. S., at 25; *Tallentire*, 477 U. S., at 224–225; *Moragne*, 398 U. S., at 397–398. Taking into account what Congress sought to achieve, we preserve the application of state statutes to deaths within territorial waters.

* * *

For the reasons stated, we hold that the damages available for the jet ski death of Natalie Calhoun are properly governed by state law.[14] The judgment of the Court of Appeals for the Third Circuit is accordingly

Affirmed.

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[14] The Third Circuit left for initial consideration by the District Court the question whether Pennsylvania's wrongful-death remedies or Puerto Rico's apply. 40 F. 3d 622, 644 (1994). The Court of Appeals also left open, as do we, the source—federal or state—of the standards governing liability, as distinguished from the rules on remedies. We thus reserve for another day reconciliation of the maritime personal injury decisions that rejected state substantive liability standards, and the maritime wrongful-death cases in which state law has held sway. Compare *Kermarec*, 358 U. S., at 628 (personal injury); *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406, 409 (1953) (same), with *Hess* v. *United States*, 361 U. S. 314, 319 (1960) (wrongful death); *The Tungus* v. *Skovgaard*, 358 U. S. 588, 592–594 (1959) (same).

Syllabus

ZICHERMAN, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF KOLE, ET AL. *v.* KOREAN AIR LINES CO., LTD.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 94–1361. Argued November 7, 1995—Decided January 16, 1996*

In a suit brought under Article 17 of the Warsaw Convention governing international air transportation, petitioners Zicherman and Mahalek were awarded loss-of-society damages for the death of their mutual relative who was a passenger on respondent Korean Air Lines' Flight KE007 when it was shot down over the Sea of Japan. The Second Circuit set aside the award, holding that general maritime law supplied the substantive compensatory damages law to be applied in an action under the Warsaw Convention and that, under such law, a plaintiff can recover for loss of society only if he was the decedent's dependent at the time of death. The court concluded that Mahalek had not established dependent status and remanded for the District Court to determine whether Zicherman was a dependent of the decedent.

Held: In a suit brought under Article 17, a plaintiff may not recover loss-of-society damages for the death of a relative in a plane crash on the high seas, within the meaning of the Death on the High Seas Act (DOHSA). Pp. 221–232.

(a) Article 17 permits compensation only for legally cognizable harm, but leaves the specification of what harm is legally cognizable to the domestic law applicable under the forum's choice-of-law rules. That the Convention does not itself resolve the issue of what harm is compensable is shown by the text of Articles 17 and 24, the Convention's negotiating and drafting history, the contracting states' postratification understanding of the Convention, and the virtually unanimous view of expert commentators. Pp. 221–228.

(b) Having concluded that compensable harm is to be determined by domestic law, the next logical question would be that of *which sovereign's* domestic law. In this case, the Court need not engage in this inquiry, because the parties have agreed that if the issue of compensable harm is unresolved by the Warsaw Convention, it is governed in the

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*Together with No. 94–1477, *Korean Air Lines Co., Ltd.* v. *Zicherman, Individually and as Executrix of the Estate of Kole, et al.*, also on certiorari to the same court.

present case by the law of the United States. The final unresolved question is then which particular United States law applies. The death that occurred here falls within the literal terms of DOHSA § 761, and it is well established that those terms apply to airplane crashes. Since recovery in a § 761 suit is limited to pecuniary damages, § 762, petitioners cannot recover for loss of society under DOHSA. Moreover, where DOHSA applies, neither state law nor general maritime law can provide a basis for recovery of loss-of-society damages. Because petitioners are not entitled to recover loss-of-society damages under DOHSA, this Court need not reach the question whether, under general maritime law, dependency is a prerequisite for loss-of-society damages. Pp. 228–232.

43 F. 3d 18, affirmed in part and reversed in part.

SCALIA, J., delivered the opinion for a unanimous Court.

W. Paul Needham argued the cause for petitioners in No. 94–1361 and respondents in No. 94–1477. With him on the briefs was *Kevin M. Hensley.*

Andrew J. Harakas argued the cause for Korean Air Lines Co., Ltd., in both cases. With him on the briefs was *George N. Tompkins, Jr.*†

JUSTICE SCALIA delivered the opinion of the Court.

This action presents the question whether, in a suit brought under Article 17 of the Warsaw Convention governing international air transportation, Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, T. S. No. 876 (1934) (reprinted in note following 49 U. S. C. App. § 1502 (1988

†*Juanita M. Madole, Donald W. Madole, George E. Farrell, Milton G. Sincoff,* and *Steven R. Pounian* filed a brief for Philomena Dooley et al. as *amici curiae* urging reversal.

Briefs of *amicus curiae* were filed for Pan American World Airways, Inc., by *Richard M. Sharp* and *Frederick C. Schafrick;* and for the Plaintiffs' Committee in *In re Air Crash Disaster at Lockerbie, Scotland,* by *Lee S. Kreindler, Steven R. Pounian, James P. Kreindler, Paul S. Edelman, Frank H. Granito, Jr., Frank H. Granito III,* and *Michel F. Baumeister.*

ed.)), a plaintiff may recover damages for loss of society resulting from the death of a relative in a plane crash on the high seas.

I

On September 1, 1983, Korean Air Lines Flight KE007, en route from Anchorage, Alaska, to Seoul, South Korea, strayed into air space of the Soviet Union and was shot down over the Sea of Japan. All 269 persons on board were killed, including Muriel Kole. Petitioners Marjorie Zicherman and Muriel Mahalek, Kole's sister and mother, respectively, sued respondent Korean Air Lines Co., Ltd. (KAL), in the United States District Court for the Southern District of New York. Petitioners' final amended complaint contained three counts, entitled, respectively, "Warsaw Convention," "Death on the High Seas Act," and "Conscious Pain and Suffering." At issue here is only the Warsaw Convention count, in which petitioners sought "judgment against KAL for their pecuniary damages, for their grief and mental anguish, for the loss of the decedent's society and companionship, and for the decedent's conscious pain and suffering." App. 29.

Along with other federal-court actions arising out of the KAL crash, petitioners' case was transferred to the United States District Court for the District of Columbia for consolidated proceedings on common issues of liability. There, a jury found that the destruction of Flight KE007 was proximately caused by "willful misconduct" of the flight crew, thus lifting the Warsaw Convention's $75,000 cap on damages. See Warsaw Convention, Art. 25, 49 Stat. 3020; Order of Civil Aeronautics Board Approving Increases in Liability Limitations of Warsaw Convention and Hague Protocol, reprinted in note following 49 U. S. C. App. § 1502 (1988 ed.). The jury awarded $50 million in punitive damages against KAL. The Court of Appeals for the District of Columbia Circuit upheld the finding of "willful misconduct," but vacated the punitive damages award, holding that the Warsaw Convention does not permit the recovery of punitive dam-

ages. *In re Korean Air Lines Disaster of Sept. 1, 1983*, 932 F. 2d 1475, 1479–1481, 1484–1490, cert. denied, 502 U. S. 994 (1991). The individual cases were then remanded by the Judicial Panel on Multidistrict Litigation to the original transferor courts for trial of compensatory damages issues.

At petitioners' damages trial in the Southern District of New York, KAL moved for determination that the Death on the High Seas Act (DOHSA), 41 Stat. 537, 46 U. S. C. App. § 761 *et seq.* (1988 ed.), prescribed the proper claimants and the recoverable damages, and that it did not permit damages for loss of society. The District Court denied the motion and held, *inter alia*, that petitioners could recover for loss of "love, affection, and companionship." *In re Korean Air Lines Disaster of Sept. 1, 1983*, 807 F. Supp. 1073, 1086–1088 (1992). The jury awarded loss-of-society damages in the amount of $70,000 to Zicherman and $28,000 to Mahalek.[1]

The Court of Appeals for the Second Circuit set aside this award. Applying its prior decisions in *In re Air Disaster at Lockerbie, Scotland, on Dec. 21, 1988*, 928 F. 2d 1267, 1278–1279 *(Lockerbie I)*, cert. denied *sub nom. Rein* v. *Pan American World Airways, Inc.*, 502 U. S. 920 (1991), and *In re Air Disaster at Lockerbie, Scotland, on Dec. 21, 1988*, 37 F. 3d 804 (1994) *(Lockerbie II)*, cert. denied *sub nom. Pan American World Airways, Inc.* v. *Pagnucco*, 513 U. S. 1126 (1995), it held that general maritime law supplied the substantive law of compensatory damages to be applied in an action under the Warsaw Convention. 43 F. 3d 18, 21–22 (1994). Then, following its decision in *Lockerbie II*, it held that, under general maritime law, a plaintiff is entitled to recover loss-of-society damages, but only if he was a depend-

[1] The jury also awarded petitioners $161,000 in survivors' grief, $16,000 to Zicherman for loss of support and inheritance and $100,000 to Zicherman for the decedent's pain and suffering. The Second Circuit has set aside the award of grief damages and has remanded for further proceedings on the award for loss of support and inheritance. None of these awards is at issue here.

ent of the decedent at the time of death. 43 F. 3d, at 22. The court concluded that as a matter of law Mahalek had not established that status, and therefore vacated her award; it remanded to the District Court for determination of whether Zicherman was a dependent of Kole. *Ibid.*

In their petition for certiorari, petitioners contended that under general maritime law dependency is not a requirement for recovering loss-of-society damages. In a cross-petition, KAL contended that the Warsaw Convention does not allow loss-of-society damages in this case, regardless of dependency. We granted certiorari. 514 U. S. 1062 (1995).

II

Article 17 of the Warsaw Convention, as set forth in the official American translation of the governing French text, provides as follows:

> "The carrier shall be liable for *damage sustained* in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." 49 Stat. 3018 (emphasis added).

The first and principal question before us is whether loss of society of a relative is made recoverable by this provision.

It is obvious that the English word "damage" or "harm"—or in the official text of the Convention, the French word "*dommage*"[2]—can be applied to an extremely wide range of phenomena, from the medical expenses incurred as a result

[2] The French text of Article 17 reads:

"Le transporteur est responsable du dommage survenu en cas de mort, de blessure ou de toute autre lésion corporelle subie par un voyageur lorsque l'accident qui a causé le dommage s'est produit à bord de l'aéronef ou au cours de toutes opérations d'embarquement et de débarquement." 49 Stat. 3005.

of Kole's injuries (for which every legal system would provide tort compensation) to the mental distress of some stranger who reads about Kole's death in the paper (for which no legal system would provide tort compensation). It cannot seriously be maintained that Article 17 uses the term in this broadest sense, thus exploding tort liability beyond what any legal system in the world allows, to the farthest reaches of what could be denominated "harm." We therefore reject petitioners' initial proposal that we simply look to English dictionary definitions of "damage" and apply that term's "plain meaning." Brief for Petitioners 7–9.

There are only two thinkable alternatives to that. First, what petitioners ultimately suggest: that "*dommage*" means what French law, in 1929, recognized as *legally cognizable* harm, which petitioners assert included not only "*dommage matériel*" (pecuniary harm of various sorts) but also "*dommage moral*" (nonpecuniary harm of various sorts, including loss of society). In support of that approach, petitioners point out that in a prior case involving Article 17 we were guided by French legal usage: *Air France* v. *Saks*, 470 U. S. 392 (1985) (interpreting the term "*accident*"). See also *Eastern Airlines, Inc.* v. *Floyd*, 499 U. S. 530 (1991) (interpreting the Article 17 term "*lésion corporelle*"). What is at issue here, however, is not simply whether we will be guided by French legal usage *vel non*. Because, as earlier discussed, the dictionary meaning of the term "*dommage*" embraces harms that no legal system would compensate, it must be acknowledged that the term is to be understood in its distinctively *legal* sense—that is, to mean only *legally cognizable harm*. The nicer question, and the critical one here, is whether the word "*dommage*" establishes *as the content of the concept "legally cognizable harm"* what French law accepted as such in 1929. No case of ours provides precedent for the adoption of French law in such detail. In *Floyd*, we looked to French law to determine whether "*lésion corporelle*" indeed meant (as it had been translated)

"bodily injury"—not to determine the subsequent question (equivalent to the question at issue here) whether "bodily injury" encompassed psychic injury. See *id.*, at 536–540. And in *Saks*, once we had determined that in French legal terminology the word "*accident*" referred to an unforeseen event, we did not further inquire whether French courts would consider the event at issue in the case unforeseen; we made that judgment for ourselves. See 470 U. S., at 405–407.

It is particularly implausible that "the shared expectations of the contracting parties," *id.*, at 399, were that their mere use of the French language would effect adoption of the precise rule applied in France as to what constitutes legally cognizable harm. Those involved in the negotiation and adoption of the Convention could not have been ignorant of the fact that the law on this point varies widely from jurisdiction to jurisdiction, and even from statute to statute within a single jurisdiction. Just as we found it "unlikely" in *Floyd* that Convention signatories would have understood the general term "*lésion corporelle*" to confer a cause of action available under French law but unrecognized in many other nations, see 499 U. S., at 540, so also in the present case we find it unlikely that they would have understood Article 17's use of the general term "*dommage*" to require compensation for elements of harm recognized in France but unrecognized elsewhere, or to forbid compensation for elements of harm *unrecognized* in France but recognized elsewhere. Many signatory nations, including Czechoslovakia, Denmark, Germany, the Netherlands, the Soviet Union, and Sweden, did not, even many years after the Warsaw Convention, recognize a cause of action for nonpecuniary harm resulting from wrongful death. See 11 International Encyclopedia of Comparative Law: Torts, ch. 9, pp. 15–18 (A. Tunc ed. 1972); *Floyd*, *supra*, at 544–545, n. 10.

The other alternative, and the only one we think realistic, is to believe that "*dommage*" means (as it does in French

legal usage) "legally cognizable harm," but that Article 17 leaves it to adjudicating courts to specify what harm is cognizable. That is not an unusual disposition. Even within our domestic law, many statutes that provide generally for "damages," or for reimbursement of "injury," leave it to the courts to decide what sorts of harms are compensable. See, *e. g.*, *Miles* v. *Apex Marine Corp.*, 498 U. S. 19, 32 (1990) (Jones Act, 46 U. S. C. App. § 688 (1988 ed.), which provides "action for damages" to "[a]ny seaman who shall suffer personal injury," permits compensation only for pecuniary loss); *Michigan Central R. Co.* v. *Vreeland*, 227 U. S. 59, 71 (1913) (Employers' Liability Act of Apr. 22, 1908, which makes employer "liable in damages . . . for . . . injury or death," permits compensation only for pecuniary loss); *Broan Mfg.* v. *Associated Distributors, Inc.*, 923 F. 2d 1232, 1235–1236 (CA6 1991) (Lanham Trade-Mark Act, 15 U. S. C. § 1117(a), which provides for recovery of "any damages sustained," permits compensation for future lost profits); *Phelps* v. *White*, 645 So. 2d 698, 703 (La. Ct. App. 3d Cir. 1994) (specifying elements of compensation allowable under La. Civ. Code Ann. § 2315.2 (West Supp. 1995), providing for recovery of "damages . . . sustained as a result" of wrongful death); *Department of Ed.* v. *Blevins*, 707 S. W. 2d 782, 783 (Ky. 1986) (Kentucky Rev. Stat. Ann. § 411.130 (Michie 1992), which provides that "damages may be recovered" for wrongful death, does not permit compensation for emotional distress).

That this is the proper interpretation is confirmed by another provision of the Convention. Article 17 is expressly limited by Article 24, which as translated provides:

> "(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.
>
> "(2) In the cases covered by article 17 the provisions of the preceding paragraph shall also apply, *without prejudice to the questions as to who are the persons who have*

the right to bring suit and what are their respective rights." 49 Stat. 3020 (emphasis added).[3]

The most natural reading of this Article is that, in an action brought under Article 17, the law of the Convention does not affect the substantive questions of who may bring suit and what they may be compensated for. Those questions are to be answered by the domestic law selected by the courts of the contracting states. Petitioners contend that, because Article 24 refers to the parties' "*respective* rights," this provision defers to domestic law only on the "procedural" issues of who has standing to sue and how the proceeds of a damages award under Article 17 should be divided among eligible claimants. It does not seem to us that the question of who is entitled to a damages award is procedural; and in any event limiting Article 24 to procedural issues would render it superfluous, since Article 28(2) provides that "[q]uestions of procedure shall be governed by the law of the court to which the case is submitted." 49 Stat. 3021. More importantly, petitioners' reading of Article 24(2) would produce a strange regime in which 1929 French law (embodied in the Convention) determines what harms arising out of international air accidents must be indemnified, while current domestic law determines who is entitled to the indemnity and how it is to be divided among claimants. When presented with an equally plausible reading of Article 24 that leads to a more comprehensible result—that the Convention left to domestic law the questions of who may recover and what compensatory damages are available to them—we decline to

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[3] The governing French text of Article 24 provides:

"(1) Dans les cas prévus aux articles 18 et 19 toute action en responsabilité, à quelque titre que ce soit, ne peut être exercée que dans les conditions et limites prévues par la présente Convention.

"(2) Dans les cas prévus à l'article 17, s'appliquent également les dispositions de l'alinéa précédent, sans préjudice de la détermination des personnes qui ont le droit d'agir et de leurs droits respectifs." 49 Stat. 3006.

embrace a reading that would produce the mélange of French and domestic law proposed by petitioners.

Because a treaty ratified by the United States is not only the law of this land, see U. S. Const., Art. II, § 2, but also an agreement among sovereign powers, we have traditionally considered as aids to its interpretation the negotiating and drafting history *(travaux préparatoires)* and the postratification understanding of the contracting parties. Both of these sources confirm that the compensable injury is to be determined by domestic law. In the drafting history, the only statements we know of that directly discuss the point were made by the Comité International Technique d'Experts Juridiques Aériens (CITEJA), which did the preparatory work for the two Conferences (1925 in Paris, 1929 in Warsaw) that produced the Warsaw Convention. In its report of May 15, 1928, the Committee stated:

> "It was asked whether it would not be possible, in this respect, to determine the category of damages subject to reparations.
>
> "Although this question seemed very interesting, it was not possible to find a satisfactory solution before knowing exactly the legislation of the various countries. It was understood that the question would be studied later on, when the issue of knowing which are the persons, who according to the various national laws, have the right to take action against the carrier, will have been elucidated." Report of the Third Session of CITEJA by Henry de Vos, reprinted in International Technical Committee of Legal Experts on Air Questions 106 (May 1928).

To the same effect is the following passage from the CITEJA Report accompanying the 1929 draft:

> "The question was asked of knowing if one could determine who the persons upon whom the action devolves in the case of death are, and what are the damages sub-

> ject to reparation. It was not possible to find a satisfactory solution to this double problem, and the CITEJA esteemed that this question of private international law should be regulated independantly *[sic]* from the present Convention." Report of the Third Session of CITEJA by Henry de Vos (Sept. 25, 1928), reprinted in Second International Conference on Private Aeronautical Law Minutes, Warsaw 1929, p. 255 (R. Horner & D. Legrez transl. 1975).

Both these statements make clear that the questions of who may recover, and what compensatory damages they may receive, were regarded as intertwined; and that both were unresolved by the Convention and left to "private international law"—*i. e.*, to the area of jurisprudence we call "conflict of laws," dealing with the application of varying domestic laws to disputes that have an interstate or international component.

We are unpersuaded by petitioners' reliance on the comment of French delegate Georges Ripert, asserting, as one basis for rejecting application of domestic law to the issue of carriers' vicarious liability, that it would be "the first time that application of national law is required." *Id.*, at 66. Reply Brief for Petitioners 2–3. Not only does this remark not have the authority of submissions by the drafting committee, but it is a generalization rather than a statement focused specifically upon the issue here: what law governs the "category of damages subject to reparations." And the generalization is demonstrably wrong to boot, since it is incontrovertible that Article 24 of the Convention requires the application of national law to *some* issues.

The postratification conduct of the contracting parties displays the same understanding that the damages recoverable—so long as they consist of compensation for harm incurred *(dommage survenu)*—are to be determined by domestic law. Some countries, including England, Germany and the Netherlands, have adopted domestic legislation to

govern the types of damages recoverable in a Convention case. See Haanappel, The right to sue in death cases under the Warsaw Convention, 6 Air Law 66, 72, 74 (1981); E. Giemulla, R. Schmid, & P. Ehlers, Warsaw Convention 39, n. 5 (1992); German Law Concerning Air Navigation (Luft VG) of Jan. 10, 1959, Arts. 35–36, 38, reprinted in 1 Senate Committee on Commerce, Air Laws and Treaties of the World, 89th Cong., 1st Sess., 766–768 (Comm. Print 1965); R. Mankiewicz, The Liability Regime of the International Air Carrier ¶ 187, pp. 160–161 (1981). Canada has adopted legislation setting forth who may bring suit under Article 24(2), but has left the question of what types of damages are recoverable to provincial law. Haanappel, *supra*, at 70–71. The Court of Appeals of Quebec has rejected the argument that Article 17 permits damages unrecoverable under domestic Quebec law. *Dame Surprenant* v. *Air Canada*, [1973] C. A. 107, 117–118, 126–127 (opinion of Deschênes, J.). But see *Preston* v. *Hunting Air Transport Ltd.*, [1956] 1 Q. B. 454, 461–462 (granting damages under Convention, but without considering Article 24). Finally, the expert commentators are virtually unanimous that the type of harm compensable is to be determined by domestic law. See, *e. g.*, H. Drion, Limitation of Liabilities in International Air Law ¶ 111, pp. 125–126 (1954); Giemulla, Schmid, & Ehlers, *supra*, at 33; D. Goedhuis, National Airlegislations and the Warsaw Convention 269 (1937); Mankiewicz, *supra*, ¶ 187, at 160–161; G. Miller, Liability in International Air Transport: The Warsaw System in Municipal Courts 125 (1977); see also Cha, The Air Carrier's Liability to Passengers in International Law, 7 Air L. Rev. 25, 56–57 (1936).

III

Having concluded that compensable harm is to be determined by domestic law, the next question to which we would logically turn is that of *which sovereign's* domestic law. That is the "private international law" issue alluded to in the last-quoted excerpt from the CITEJA Report. Choice of

law is, of course, determined by the forum jurisdiction, see E. Scoles & P. Hay, Conflict of Laws § 3.56 (1982), and would normally be a question confronting us here. We have been spared that inquiry, however, because both parties agree that if the issue of compensable harm is (as we have determined) unresolved by the Convention itself, it is governed in the present case by the law of the United States.

That leaves a final question unresolved: Which particular law of the United States provides the governing rule? The Second Circuit, moved by the need to "maintain a uniform law under the Warsaw Convention," held that general maritime law governs causes of action under the Convention, whether the accident out of which they arise occurs on land or on the high seas. 43 F. 3d, at 21–22. We think not. As we have discussed, the Convention itself contains no rule of law governing the present question; nor does it empower us to develop some common-law rule—under cover of general admiralty law or otherwise—that will supersede the normal federal disposition. Congress may choose to enact special provisions applicable to Warsaw Convention cases, as some countries have done. See *supra*, at 227–228. Absent such legislation, however, Articles 17 and 24(2) provide nothing more than a pass-through, authorizing us to apply the law that would govern in absence of the Warsaw Convention. There is little doubt what that law is in this case.

Section 761 of DOHSA provides:

> "Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would

> have been liable if death had not ensued." 46 U. S. C. App. § 761 (1988 ed.).

The death that occurred here falls within the literal terms of this provision, and it is well established that those literal terms apply to airplane crashes. See *Executive Jet Aviation, Inc.* v. *Cleveland*, 409 U. S. 249, 263–264 (1972). Section 762 of DOHSA provides that the recovery in a suit under § 761 "shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought." 46 U. S. C. App. § 762. Thus, petitioners cannot recover loss-of-society damages under DOHSA. Moreover, where DOHSA applies, neither state law, see *Offshore Logistics, Inc.* v. *Tallentire*, 477 U. S. 207, 232–233 (1986), nor general maritime law, see *Mobil Oil Corp.* v. *Higginbotham*, 436 U. S. 618, 625–626 (1978), can provide a basis for recovery of loss-of-society damages.[4]

Petitioners argue that DOHSA should not apply to this cause of action because of the concern expressed by the Second Circuit: that "a uniform law should govern Warsaw Convention cases." 43 F. 3d, at 21. They urge that, if we must look to domestic law, we should craft a federal rule of damages that will be applicable in all suits brought under the Convention. Undoubtedly it was a primary function of the Warsaw Convention to foster uniformity in the law of international air travel, see *Floyd*, 499 U. S., at 552, but as our discussion above has made clear, this is not an area in which the imposition of uniformity was found feasible. See *supra*, at 226–227. The Convention neither adopted any uniform

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[4] We need not consider whether § 761 of DOHSA calls into question the District Court's determination that the decedent's mother is a proper party to this suit, or its grant of a jury trial, see *Romero* v. *International Terminal Operating Co.*, 358 U. S. 354, 371, n. 28 (1959), and whether § 762 contradicts the District Court's allowance of pain and suffering damages, see *Offshore Logistics, Inc.*, 477 U. S., at 215, n. 1. KAL challenged none of these rulings in its petition for certiorari.

rule of its own nor authorized national courts to pursue uniformity in derogation of otherwise applicable law. Petitioners argue, in effect, that the Convention contains an implicit authorization for national courts to create uniformity between overland and oversea accidents governed by their respective domestic laws, even though it leaves the vast discrepancies among the various domestic laws untouched. That is most unlikely.

Finally, petitioners contend that DOHSA cannot supply the substantive law of damages, because this would result in an unintended "double cap." They argue that the Warsaw Convention's $75,000 per passenger limit on liability (except in cases of willful misconduct), when combined with a DOHSA rule prohibiting compensation for nonpecuniary harm, will not sufficiently deter willful misconduct. We are unpersuaded. The Convention unquestionably envisions the application of domestic law; it is the function of Congress, and not of this Court, to decide that domestic law, alone or in combination with the Convention, provides inadequate deterrence.

* * *

We conclude that Articles 17 and 24(2) of the Warsaw Convention permit compensation only for legally cognizable harm, but leave the specification of what harm is legally cognizable to the domestic law applicable under the forum's choice-of-law rules. Where, as here, an airplane crash occurs on the high seas, DOHSA supplies the substantive United States law. Because DOHSA permits only pecuniary damages, petitioners are not entitled to recover for loss of society. We therefore need not reach the question whether, under general maritime law, dependency is a prerequisite for loss-of-society damages.

Accordingly, that portion of the Second Circuit judgment permitting Zicherman to recover loss-of-society damages if she can establish her dependency on the decedent is re-

versed, and that portion of the judgment vacating the award of loss-of-society damages to Mahalek is affirmed.

It is so ordered.

Per Curiam

LOTUS DEVELOPMENT CORP. *v.* BORLAND INTERNATIONAL, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 94–2003. Argued January 8, 1996—Decided January 16, 1996

49 F. 3d 807, affirmed by an equally divided Court.

Henry B. Gutman argued the cause for petitioner. With him on the briefs were *Kerry L. Konrad*, *Jeffrey E. Ostrow*, *Arthur R. Miller*, *Neal D. Goldman*, and *Donald J. Rosenberg*.

Gary L. Reback argued the cause for respondent. With him on the brief were *Michael Barclay*, *Susan A. Creighton*, and *Katherine L. Parks*.*

PER CURIAM.

The judgment of the United States Court of Appeals for the First Circuit is affirmed by an equally divided Court.

**Morton David Goldberg*, *June M. Besek*, *Davis O. Carson*, and *Jesse M. Feder* filed a brief for Digital Equipment Corp. et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for Altai, Inc., by *Susan Gertrude Braden*; for the American Committee for Interoperable Systems et al. by *Peter M. C. Choy* and *Paul Goldstein*; for Computer Scientists by *Ron Kilgard* and *Karl M. Tilleman*; for the League for Programming Freedom by *Eben Moglen* and *Pamela S. Karlan*; for the Software Forum by *Diane Marie O'Malley*; for the Software Industry Coalition et al. by *Thomas F. Villeneuve*; for the Software Protection Committee of the Minnesota Intellectual Property Law Association by *Steven W. Lundberg*, *Daniel J. Kluth*, and *Rudolph P. Hofmann, Jr.*; for Copyright Law Professors by *Pamela Samuelson*; and for *Peter S. Menell* et al. by Mr. Menell, *pro se*.

Briefs of *amici curiae* were filed for the American Intellectual Property Law Association by *Don W. Martens*, *Baila H. Celedonia*, and *Charles L. Gholz*; for Economics Professors and Scholars by *Joshua R. Floum*; for Users Groups by *Rex S. Heinke*; and for *Howard C. Anawalt*, *pro se*.

JUSTICE STEVENS took no part in the consideration or decision of this case.

Syllabus

COMMISSIONER OF INTERNAL REVENUE *v.* LUNDY

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 94–1785. Argued November 6, 1995—Decided January 17, 1996

Respondent Lundy and his wife withheld from their 1987 wages substantially more in federal income taxes than they actually owed for that year, but they did not file their 1987 tax return when it was due, nor did they file a return or claim a refund of the overpaid taxes in the succeeding 2½ years. On September 26, 1990, the Commissioner of Internal Revenue mailed Lundy a notice of deficiency for 1987. Some three months later, the Lundys filed their joint 1987 tax return, which claimed a refund of their overpaid taxes, and Lundy filed a timely petition in the Tax Court seeking a redetermination of the claimed deficiency and a refund. The Tax Court held that where, as here, a taxpayer has not filed a tax return by the time a notice of deficiency is mailed, and the notice is mailed more than two years after the date on which the taxes are paid, a 2-year "look-back" period applies under 26 U. S. C. § 6512(b)(3)(B), and the court lacks jurisdiction to award a refund. The Fourth Circuit reversed, finding that the applicable look-back period in these circumstances is three years and that the Tax Court had jurisdiction to award a refund.

Held: The Tax Court lacks jurisdiction to award a refund of taxes paid more than two years prior to the date on which the Commissioner mailed the taxpayer a notice of deficiency, if, on the date that the notice was mailed, the taxpayer had not yet filed a return. In these circumstances, the applicable look-back period under § 6512(b)(3)(B) is two years. Pp. 239–253.

(a) Section 6512(b)(3)(B) forbids the Tax Court to award a refund unless it first determines that the taxes were paid "within the [look-back] period which would be applicable under section 6511(b)(2) . . . if on the date of the mailing of the notice of deficiency a claim [for refund] had been filed." Section 6511(b)(2)(A) in turn instructs the court to apply a 3-year look-back period if a refund claim is filed, as required by § 6511(a), "within 3 years from the time the return was filed," while § 6511(b)(2)(B) specifies a 2-year look-back period if the refund claim is not filed within that 3-year period. The Tax Court properly applied the 2-year look-back period to Lundy's case because, as of September 26, 1990 (the date the notice of deficiency was mailed), Lundy had not filed a tax return,

and, consequently, a claim filed on that date would not be filed within the 3-year period described in § 6511(a). Lundy's taxes were withheld from his wages, so they are deemed paid on the date his 1987 tax return was due (April 15, 1988), which is more than two years prior to the date the notice of deficiency was mailed. Lundy is therefore seeking a refund of taxes paid outside the applicable look-back period, and the Tax Court lacks jurisdiction to award a refund. Pp. 239–245.

(b) Lundy suggests two alternative interpretations of § 6512(b)(3)(B), neither of which is persuasive. Lundy first adopts the Fourth Circuit's view, which is that the applicable look-back period is determined by reference to the date that the taxpayer *actually filed* a claim for refund, and argues that he is entitled to a 3-year look-back period because his late-filed 1987 tax return contained a refund claim that was filed within three years from the filing of the return itself. This interpretation is contrary to the requirements of the statute and leads to a result that Congress could not have intended, as it in some circumstances subjects a timely filer of a return to a shorter limitations period in Tax Court than a delinquent filer. Lundy's second argument, that the "claim" contemplated by § 6512(b)(3)(B) can only be a claim filed on a tax return, such that a uniform 3-year look-back period applies under that section, is similarly contrary to the language of the statute. Pp. 245–250.

(c) This Court is bound by § 6512(b)(3)(B)'s language as it is written, and even if the Court were persuaded by Lundy's policy-based arguments for applying a 3-year look-back period, the Court is not free to rewrite the statute simply because its effects might be susceptible of improvement. Pp. 250–253.

45 F. 3d 856, reversed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, *post*, p. 253. THOMAS, J., filed a dissenting opinion, in which STEVENS, J., joined, *post*, p. 253.

Kent L. Jones argued the cause for petitioner. With him on the briefs were *Solicitor General Days, Assistant Attorney General Argrett, Deputy Solicitor General Wallace, Richard Farber,* and *Regina S. Moriarty.*

Glenn P. Schwartz argued the cause for respondent. With him on the brief was *Lawrence J. Ross.**

**David M. Kirsch, pro se,* filed a brief as *amicus curiae* urging affirmance.

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case, we consider the "look-back" period for obtaining a refund of overpaid taxes in the United States Tax Court under 26 U. S. C. § 6512(b)(3)(B), and decide whether the Tax Court can award a refund of taxes paid more than two years prior to the date on which the Commissioner of Internal Revenue mailed the taxpayer a notice of deficiency, when, on the date the notice of deficiency was mailed, the taxpayer had not yet filed a return. We hold that in these circumstances the 2-year look-back period set forth in § 6512(b)(3)(B) applies, and the Tax Court lacks jurisdiction to award a refund.

I

During 1987, respondent Robert F. Lundy and his wife had $10,131 in federal income taxes withheld from their wages. This amount was substantially more than the $6,594 the Lundys actually owed in taxes for that year, but the Lundys did not file their 1987 tax return when it was due, nor did they file a return or claim a refund of the overpaid taxes in the succeeding 2½ years. On September 26, 1990, the Commissioner of Internal Revenue mailed Lundy a notice of deficiency, informing him that he owed $7,672 in additional taxes and interest for 1987 and that he was liable for substantial penalties for delinquent filing and negligent underpayment of taxes. See 26 U. S. C. §§ 6651(a)(1) and 6653(1).

Lundy and his wife mailed their joint tax return for 1987 to the Internal Revenue Service (IRS) on December 22, 1990. This return indicated that the Lundys had overpaid their income taxes for 1987 by $3,537 and claimed a refund in that amount. Six days after the return was mailed, Lundy filed a timely petition in the Tax Court seeking a redetermination of the claimed deficiency and a refund of the couple's overpaid taxes. The Commissioner filed an answer generally denying the allegations in Lundy's petition. Thereafter, the parties negotiated towards a settlement of the claimed deficiency and refund claim. On March 17, 1992, the Commis-

sioner filed an amended answer acknowledging that Lundy had filed a tax return and that Lundy claimed to have overpaid his 1987 taxes by $3,537.

The Commissioner contended in this amended pleading that the Tax Court lacked jurisdiction to award Lundy a refund. The Commissioner argued that if a taxpayer does not file a tax return before the IRS mails the taxpayer a notice of deficiency, the Tax Court can only award the taxpayer a refund of taxes paid within two years prior to the date the notice of deficiency was mailed. See 26 U. S. C. § 6512(b)(3)(B). Under the Commissioner's interpretation of § 6512(b)(3)(B), the Tax Court lacked jurisdiction to award Lundy a refund because Lundy's withheld taxes were deemed paid on the date that his 1987 tax return was due (April 15, 1988), see § 6513(b)(1), which is more than two years before the date the notice was mailed (September 26, 1990).

The Tax Court agreed with the position taken by the Commissioner and denied Lundy's refund claim. Citing an unbroken line of Tax Court cases adopting a similar interpretation of § 6512(b)(3)(B), *e. g.*, *Allen* v. *Commissioner*, 99 T. C. 475, 479–480 (1992); *Galuska* v. *Commissioner*, 98 T. C. 661, 665 (1992); *Berry* v. *Commissioner*, 97 T. C. 339, 344–345 (1991); *White* v. *Commissioner*, 72 T. C. 1126, 1131–1133 (1979) (renumbered statute); *Hosking* v. *Commissioner*, 62 T. C. 635, 642–643 (1974) (renumbered statute), the Tax Court held that if a taxpayer has not filed a tax return by the time the notice of deficiency is mailed, and the notice is mailed more than two years after the date on which the taxes are paid, the look-back period under § 6512(b)(3)(B) is two years and the Tax Court lacks jurisdiction to award a refund. 65 TCM 3011, 3014–3015 (1993), ¶ 93,278 RIA Memo TC.

The Court of Appeals for the Fourth Circuit reversed, finding that the applicable look-back period in these circumstances is three years and that the Tax Court had juris-

diction to award Lundy a refund. 45 F. 3d 856, 861 (1995). Every other Court of Appeals to have addressed the question has affirmed the Tax Court's interpretation of § 6512(b)(3)(B). See *Davison* v. *Commissioner*, 9 F. 3d 1538 (CA2 1993) (judgt. order); *Allen* v. *Commissioner*, 23 F. 3d 406 (CA6 1994) (judgt. order); *Galuska* v. *Commissioner*, 5 F. 3d 195, 196 (CA7 1993); *Richards* v. *Commissioner*, 37 F. 3d 587, 589 (CA10 1994); see also *Rossman* v. *Commissioner*, 46 F. 3d 1144 (CA9 1995) (judgt. order) (aff'g on other grounds). We granted certiorari to resolve the conflict, 515 U. S. 1102 (1995), and now reverse.

II

A taxpayer seeking a refund of overpaid taxes ordinarily must file a timely claim for a refund with the IRS under 26 U. S. C. § 6511.[1] That section contains two separate provi-

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[1] In relevant part, § 6511 provides:

"(a) Period of limitation on filing claim

"Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

"(b) Limitation on allowance of credits and refunds

"(1) Filing of claim within prescribed period

"No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

"(2) Limit on amount of credit or refund

"(A) Limit where claim filed within 3-year period

"If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of

sions for determining the timeliness of a refund claim. It first establishes a *filing deadline:* The taxpayer must file a claim for a refund "within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid." §6511(b)(1) (incorporating by reference §6511(a)). It also defines two *"look-back" periods:* If the claim is filed "within 3 years from the time the return was filed," *ibid.*, then the taxpayer is entitled to a refund of "the portion of the tax paid within the 3 years immediately preceding the filing of the claim." §6511(b)(2)(A) (incorporating by reference §6511(a)). If the claim is not filed within that 3-year period, then the taxpayer is entitled to a refund of only that "portion of the tax paid during the 2 years immediately preceding the filing of the claim." §6511(b)(2)(B) (incorporating by reference §6511(a)).

Unlike the provisions governing refund suits in United States District Court or the United States Court of Federal Claims, which make timely filing of a refund claim a jurisdictional prerequisite to bringing suit, see 26 U. S. C. §7422(a); *Martin* v. *United States*, 833 F. 2d 655, 658–659 (CA7 1987), the restrictions governing the Tax Court's authority to award a refund of overpaid taxes incorporate only the look-back period and not the filing deadline from §6511. See 26

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time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

"(B) Limit where claim not filed within 3-year period

"If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

"(C) Limit if no claim filed

"If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed."

U. S. C. § 6512(b)(3).[2] Consequently, a taxpayer who seeks a refund in the Tax Court, like respondent, does not need to actually file a claim for refund with the IRS; the taxpayer need only show that the tax to be refunded was paid during the applicable look-back period.

In this case, the applicable look-back period is set forth in § 6512(b)(3)(B), which provides that the Tax Court cannot award a refund of any overpaid taxes unless it first determines that the taxes were paid:

> "within the period which would be applicable under section 6511(b)(2) . . . if on the date of the mailing of the

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[2] In relevant part, § 6512(b) provides:

"(1) Jurisdiction to determine

"Except as provided by paragraph (3) and by section 7463, if the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year . . . in respect of which the Secretary determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer.

. . . . . .

"(3) Limit on amount of credit or refund

"No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

"(A) after the mailing of the notice of deficiency,

"(B) within the period which would be applicable under section 6511(b)(2), (c), or (d), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment, or

"(C) within the period which would be applicable under section 6511(b)(2), (c), or (d), in respect of any claim for refund filed within the applicable period specified in section 6511 and before the date of the mailing of the notice of deficiency—

"(i) which had not been disallowed before that date,

"(ii) which had been disallowed before that date and in respect of which a timely suit for refund could have been commenced as of that date, or

"(iii) in respect of which a suit for refund had been commenced before that date and within the period specified in section 6532."

> notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment."

The analysis dictated by § 6512(b)(3)(B) is not elegant, but it is straightforward. Though some courts have adverted to the filing of a "deemed claim," see *Galuska*, 5 F. 3d, at 196; *Richards*, 37 F. 3d, at 589, all that matters for the proper application of § 6512(b)(3)(B) is that the "claim" contemplated in that section be treated as the only mechanism for determining whether a taxpayer can recover a refund. Section 6512(b)(3)(B) defines the look-back period that applies in Tax Court by incorporating the look-back provisions from § 6511(b)(2), and directs the Tax Court to determine the applicable period by inquiring into the timeliness of a hypothetical claim for refund filed "on the date of the mailing of the notice of deficiency."

To this end, § 6512(b)(3)(B) directs the Tax Court's attention to § 6511(b)(2), which in turn instructs the court to apply either a 3-year or a 2-year look-back period. See §§ 6511(b)(2)(A) and (B) (incorporating by reference § 6511(a)); see *supra*, at 240. To decide which of these look-back periods to apply, the Tax Court must consult the filing provisions of § 6511(a) and ask whether the claim described by § 6512(b)(3)(B)—a claim filed "on the date of the mailing of the notice of deficiency"—would be filed "within 3 years from the time the return was filed." See § 6511(b)(2)(A) (incorporating by reference § 6511(a)). If a claim filed on the date of the mailing of the notice of deficiency would be filed within that 3-year period, then the look-back period is also three years and the Tax Court has jurisdiction to award a refund of any taxes paid within three years prior to the date of the mailing of the notice of deficiency. §§ 6511(b)(2)(A) and 6512(b)(3)(B). If the claim would not be filed within that 3-year period, then the period for awarding a refund is only two years. §§ 6511(b)(2)(B) and 6512(b)(3)(B).

In this case, we must determine which of these two look-back periods to apply when the taxpayer fails to file a tax return when it is due, and the Commissioner mails the taxpayer a notice of deficiency before the taxpayer gets around to filing a late return. The Fourth Circuit held that a taxpayer in this situation is entitled to a 3-year look-back period if the taxpayer actually files a timely claim at some point in the litigation, see *infra*, at 246, and respondent offers additional reasons for applying a 3-year look-back period, see *infra*, at 249–252. We think the proper application of § 6512(b)(3)(B) instead requires that a 2-year look-back period be applied.

We reach this conclusion by following the instructions set out in § 6512(b)(3)(B). The operative question is whether a claim filed "on the date of the mailing of the notice of deficiency" would be filed "within 3 years from the time the return was filed." See § 6512(b)(3)(B) (incorporating §§ 6511(b)(2) and 6511(a)). In the case of a taxpayer who does not file a return before the notice of deficiency is mailed, the claim described in § 6512(b)(3)(B) could not be filed "within 3 years from the time the return was filed." No return having been filed, there is no date from which to measure the 3-year filing period described in § 6511(a). Consequently, the claim contemplated in § 6512(b)(3)(B) would not be filed within the 3-year window described in § 6511(a), and the 3-year look-back period set out in § 6511(b)(2)(A) would not apply. The applicable look-back period is instead the default 2-year period described in § 6511(b)(2)(B), which is measured from the date of the mailing of the notice of deficiency, see § 6512(b)(3)(B). The taxpayer is entitled to a refund of any taxes paid within two years prior to the date of the mailing of the notice of deficiency.

Special rules might apply in some cases, see, *e. g.*, § 6511(c) (extension of time by agreement); § 6511(d) (special limita-

tions periods for designated items), but in the case where the taxpayer has filed a timely tax return and the IRS is claiming a deficiency in taxes from that return, the interplay of §§ 6512(b)(3)(B) and 6511(b)(2) generally ensures that the taxpayer can obtain a refund of any taxes against which the IRS is asserting a deficiency. In most cases, the notice of deficiency must be mailed within three years from the date the tax return is filed. See 26 U. S. C. §§ 6501(a) and 6503(a)(1); *Badaracco* v. *Commissioner*, 464 U. S. 386, 389, 392 (1984). Therefore, if the taxpayer has already filed a return (albeit perhaps a faulty one), any claim filed "on the date of the mailing of the notice of deficiency" would necessarily be filed within three years from the date the return is filed. In these circumstances, the applicable look-back period under § 6512(b)(3)(B) would be the 3-year period defined in § 6511(b)(2)(A), and the Tax Court would have jurisdiction to award a refund.

Therefore, in the case of a taxpayer who files a timely tax return, § 6512(b)(3)(B) usually operates to toll the filing period that might otherwise deprive the taxpayer of the opportunity to seek a refund. If a taxpayer contesting the accuracy of a previously filed tax return in Tax Court discovers for the first time during the course of litigation that he is entitled to a refund, the taxpayer can obtain a refund from the Tax Court without first filing a timely claim for refund with the IRS. It does not matter, as it would in district court, see § 7422 (incorporating § 6511), that the taxpayer has discovered the entitlement to a refund well after the period for filing a timely refund claim with the IRS has passed, because § 6512(b)(3)(B) applies "whether or not [a claim is] filed," and the look-back period is measured from the date of the mailing of the notice of deficiency. *Ibid.* Nor does it matter, as it might in a refund suit, see 26 CFR § 301.6402–2(b)(1) (1995), whether the taxpayer has previously apprised the IRS of the precise basis for the refund claim, because 26 U. S. C. § 6512(b)(3)(B) posits the filing of a hypothetical claim

"stating the grounds upon which the Tax Court finds that there is an overpayment."

Section 6512(b)(3)(B) treats delinquent filers of income tax returns less charitably. Whereas timely filers are virtually assured the opportunity to seek a refund in the event they are drawn into Tax Court litigation, a delinquent filer's entitlement to a refund in Tax Court depends on the date of the mailing of the notice of deficiency. Section 6512(b)(3)(B) tolls the limitations period, in that it directs the Tax Court to measure the look-back period from the date on which the notice of deficiency is mailed and not the date on which the taxpayer actually files a claim for refund. But in the case of delinquent filers, § 6512(b)(3)(B) establishes only a 2-year look-back period, so the delinquent filer is not assured the opportunity to seek a refund in Tax Court: If the notice of deficiency is mailed more than two years after the taxes were paid, the Tax Court lacks jurisdiction to award the taxpayer a refund.

The Tax Court properly applied this 2-year look-back period to Lundy's case. As of September 26, 1990 (the date the notice was mailed), Lundy had not filed a tax return. Consequently, a claim filed on that date would not be filed within the 3-year period described in § 6511(a), and the 2-year period from § 6511(b)(2)(B) applies. Lundy's taxes were withheld from his wages, so they are deemed paid on the date his 1987 tax return was due (April 15, 1988), see § 6513(b)(1), which is more than two years prior to the date the notice of deficiency was mailed (September 26, 1990). Lundy is therefore seeking a refund of taxes paid outside the applicable look-back period, and the Tax Court lacks jurisdiction to award such a refund.

III

In deciding Lundy's case, the Fourth Circuit adopted a different approach to interpreting § 6512(b)(3)(B) and applied a 3-year look-back period. Respondent supports the Fourth

Circuit's rationale, but also offers an argument for applying a uniform 3-year look-back period under § 6512(b)(3)(B). We find neither position persuasive.

The Fourth Circuit held:

> "[T]he Tax Court, when applying the limitation provision of § 6511(b)(2) in light of § 6512(b)(3)(B), should substitute the date of the mailing of the notice of deficiency for the date on which the taxpayer filed the claim for refund, but only for the purpose of determining the benchmark date for measuring the limitation period and not for the purpose of determining whether the two-year or three-year limitation period applies." 45 F. 3d, at 861.

In other words, the Fourth Circuit held that the look-back period is *measured* from the date of the mailing of the notice of deficiency (*i. e.*, the taxpayer is entitled to a refund of any taxes paid within either two or three years prior to that date), but that that date is irrelevant in calculating the *length* of the look-back period itself. The look-back period, the Fourth Circuit held, must be defined in terms of the date that the taxpayer *actually filed* a claim for refund. *Ibid.* ("[T]he three-year limitation period applies because Lundy filed his claim for refund . . . within three years of filing his tax return"). Thus, under the Fourth Circuit's view, Lundy was entitled to a 3-year look-back period because Lundy's late-filed 1987 tax return contained a claim for refund, and that claim was filed within three years from the filing of the return. *Ibid.* (taxpayer entitled to same look-back period that would apply in district court).

Contrary to the Fourth Circuit's interpretation, the fact that Lundy actually filed a claim for a refund after the date on which the Commissioner mailed the notice of deficiency has no bearing in determining whether the Tax Court has jurisdiction to award Lundy a refund. See *supra*, at 240–241. Once a taxpayer files a petition with the Tax Court,

the Tax Court has exclusive jurisdiction to determine the existence of a deficiency or to award a refund, see 26 U. S. C. § 6512(a), and the Tax Court's jurisdiction to award a refund is limited to those circumstances delineated in § 6512(b)(3). Section 6512(b)(3)(C) is the only provision that measures the look-back period based on a refund claim that is actually filed by the taxpayer, and that provision is inapplicable here because it only applies to refund claims filed "before the date of the mailing of the notice of deficiency." § 6512(b)(3)(C). Under § 6512(b)(3)(B), which is the provision that does apply, the Tax Court is instructed to consider only the timeliness of a claim filed "on the date of the mailing of the notice of deficiency," not the timeliness of any claim that the taxpayer might actually file.

The Fourth Circuit's rule also leads to a result that Congress could not have intended, in that it subjects the timely, not the delinquent, filer to a shorter limitations period in Tax Court. Under the Fourth Circuit's rule, the availability of a refund turns entirely on whether the taxpayer has in fact filed a claim for refund with the IRS, because it is the date of *actual filing* that determines the applicable look-back period under § 6511(b)(2) (and, by incorporation, § 6512(b)(3)(B)). See 45 F. 3d, at 861; *supra*, at 246. This rule might "eliminat[e] the inequities resulting" from adhering to the 2-year look-back period, 45 F. 3d, at 863, but it creates an even greater inequity in the case of a taxpayer who dutifully files a tax return when it is due, but does not initially claim a refund. We think our interpretation of the statute achieves an appropriate and reasonable result in this case: The taxpayer who files a timely income tax return could obtain a refund in the Tax Court under § 6512(b)(3)(B), without regard to whether the taxpayer has actually filed a timely claim for refund. See *supra*, at 244–245.

If it is the actual filing of a refund claim that determines the length of the look-back period, as the Fourth Circuit held, the filer of a timely income tax return might be out of

luck. If the taxpayer does not file a claim for refund with his tax return, and the notice of deficiency arrives shortly before the 3-year period for filing a timely claim expires, see §§6511(a) and (b)(1), the taxpayer might not discover his entitlement to a refund until well after the commencement of litigation in the Tax Court. But having filed a timely return, the taxpayer would be precluded by the passage of time from filing an actual claim for refund "within 3 years from the time the return was filed," as §6511(b)(2)(A) requires. §6511(b)(2)(A) (incorporating by reference §6511(a)). The taxpayer would therefore be entitled only to a refund of taxes paid within two years prior to the mailing of the notice of deficiency. See §6511(b)(2)(B); 45 F. 3d, at 861–862 (taxpayer entitled to same look-back period as would apply in district court, and look-back period is determined based on date of actual filing). It is unlikely that Congress intended for a taxpayer in Tax Court to be worse off for having filed a timely return, but that result would be compelled under the Fourth Circuit's approach.

Lundy offers an alternative reading of the statute that avoids this unreasonable result, but Lundy's approach is similarly defective. The main thrust of Lundy's argument is that the "claim" contemplated in §6512(b)(3)(B) could be filed "within 3 years from the time the return was filed," such that the applicable look-back period under §6512(b)(3)(B) would be three years, if the claim were itself filed on a tax return. Lundy in fact argues that Congress must have intended the claim described in §6512(b)(3)(B) to be a claim filed on a return, because there is no other way to file a claim for refund with the IRS. Brief for Respondent 28, 30 (citing 26 CFR §301.6402–3(a)(1) (1995)). Lundy therefore argues that §6512(b)(3)(B) incorporates a uniform 3-year look-back period for Tax Court cases: If the taxpayer files a timely return, the notice of deficiency (and the "claim" under §6512(b)(3)(B)) will necessarily be filed within three years of the return and the look-back period is three years; if the

taxpayer does not file a return, then the claim contemplated in § 6512(b)(3)(B) is deemed to be a claim filed with, and thus within three years of, a return and the look-back period is again three years.

Like the Fourth Circuit's approach, Lundy's reading of the statute has the convenient effect of ensuring that taxpayers in Lundy's position can almost always obtain a refund if they file in Tax Court, but we are bound by the terms Congress chose to use when it drafted the statute, and we do not think that the term "claim" as it is used in § 6512(b)(3)(B) is susceptible of the interpretation Lundy has given it. The Internal Revenue Code does not define the term "claim for refund" as it is used in § 6512(b)(3)(B), cf. 26 U. S. C. § 6696(e)(2) ("For purposes of sections 6694 and 6695 . . . [t]he term 'claim for refund' means a claim for refund of, or credit against, any tax imposed by subtitle A"), but it is apparent from the language of § 6512(b)(3)(B) and the statute as a whole that a claim for refund can be filed separately from a return. Section 6512(b)(3)(B) provides that the Tax Court has jurisdiction to award a refund to the extent the taxpayer would be entitled to a refund "if on the date of the mailing of the notice of deficiency *a claim* had been filed." (Emphasis added.) It does not state, as Lundy would have it, that a taxpayer is entitled to a refund if on that date "a claim and a return had been filed."

Perhaps the most compelling evidence that Congress did not intend the term "claim" in § 6512 to mean a "claim filed on a return" is the parallel use of the term "claim" in § 6511(a). Section 6511(a) indicates that a claim for refund is timely if it is "filed by the taxpayer within 3 years from the time the return was filed," and it plainly contemplates that a claim can be filed even "if no return was filed." If a claim could *only* be filed with a return, as Lundy contends, these provisions of the statute would be senseless, cf. 26 U. S. C. § 6696 (separately defining "claim for refund" and "return"), and we have been given no reason to believe that Congress

meant the term "claim" to mean one thing in § 6511 but to mean something else altogether in the very next section of the statute. The interrelationship and close proximity of these provisions of the statute "presents a classic case for application of the 'normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning.'" *Sullivan* v. *Stroop*, 496 U. S. 478, 484 (1990) (quoting *Sorenson* v. *Secretary of Treasury*, 475 U. S. 851, 860 (1986) (internal quotation marks omitted)).

The regulation Lundy cites in support of his interpretation, 26 CFR § 301.6402–3(a)(1) (1995), is consistent with our interpretation of the statute. That regulation states only that a claim must "[i]n general" be filed on a return, *ibid.*, inviting the obvious conclusion that there are some circumstances in which a claim and a return can be filed separately. We have previously recognized that even a claim that does not comply with federal regulations might suffice to toll the limitations periods under the Tax Code, see, *e. g.*, *United States* v. *Kales*, 314 U. S. 186, 194 (1941) ("notice fairly advising the Commissioner of the nature of the taxpayer's claim" tolls the limitations period, even if "it does not comply with formal requirements of the statute and regulations"), and we must assume that if Congress had intended to require that the "claim" described in § 6512(b)(3)(B) be a "claim filed on a return," it would have said so explicitly.

IV

Lundy offers two policy-based arguments for applying a 3-year look-back period under § 6512(b)(3)(B). He argues that the application of a 2-year period is contrary to Congress' broad intent in drafting § 6512(b)(3)(B), which was to preserve, not defeat, a taxpayer's claim to a refund in Tax Court, and he claims that our interpretation creates an incongruity between the limitations period that applies in Tax Court litigation and the period that would apply in a refund

suit filed in district court or the Court of Federal Claims. Even if we were inclined to depart from the plain language of the statute, we would find neither of these arguments persuasive.

Lundy correctly argues that Congress intended § 6512(b)(3)(B) to permit taxpayers to seek a refund in Tax Court in circumstances in which they might otherwise be barred from filing an administrative claim for refund with the IRS. This is in fact the way § 6512(b)(3)(B) operates in a large number of cases. See *supra*, at 244–245. But that does not mean that Congress intended that § 6512(b)(3)(B) would always preserve taxpayers' ability to seek a refund. Indeed, it is apparent from the face of the statute that Congress also intended § 6512(b)(3)(B) to act sometimes as a bar to recovery. To this end, the section incorporates *both* the 2-year and the 3-year look-back periods from § 6511(b)(2), and we must assume (contrary to Lundy's reading, which provides a uniform 3-year period, see *supra*, at 248–249) that Congress intended for both those look-back periods to have some effect. Cf. *Badaracco*, 464 U. S., at 405 (STEVENS, J., dissenting) ("Whatever the correct standard for construing a statute of limitations . . . surely the presumption ought to be that some limitations period is applicable"). (Emphasis deleted.)

Lundy also suggests that our interpretation of the statute creates a disparity between the limitations period that applies in Tax Court and the periods that apply in refund suits filed in district court or the Court of Federal Claims. In this regard, Lundy argues that the claim for refund he filed with his tax return on December 28 would have been timely for purposes of district court litigation because it was filed "within 3 years from the time the return was filed," § 6511(b)(1) (incorporating by reference § 6511(a)); see also Rev. Rul. 76–511, 1976–2 Cum. Bull. 428, and within the 3-year look-back period that would apply under § 6511(b)(2)(A). Petitioner disagrees that there is any disparity, arguing that Lundy's interpretation of the statute is wrong and that

Lundy's claim for refund would not have been considered timely in district court. See Brief for Petitioner 12, 29–30, and n. 11 (citing *Miller* v. *United States*, 38 F. 3d 473, 475 (CA9 1994)).

We assume without deciding that Lundy is correct, and that a different limitations period would apply in district court, but nonetheless find in this disparity no excuse to change the limitations scheme that Congress has crafted. The rules governing litigation in Tax Court differ in many ways from the rules governing litigation in the district court and the Court of Federal Claims. Some of these differences might make the Tax Court a more favorable forum, while others may not. Compare 26 U. S. C. § 6213(a) (taxpayer can seek relief in Tax Court without first paying an assessment of taxes) with *Flora* v. *United States*, 362 U. S. 145, 177 (1960) (28 U. S. C. § 1346(a)(1) requires full payment of the tax assessment before taxpayer can file a refund suit in district court); and compare 26 U. S. C. § 6512(b)(3)(B) (Tax Court must assume that the taxpayer has filed a claim "stating the grounds upon which the Tax Court" intends to award a refund) with 26 CFR § 301.6402–2(b)(1) (1995) (claim for refund in district court must state grounds for refund with specificity). To the extent our interpretation of § 6512(b)(3)(B) reveals a further distinction between the rules that apply in these forums, it is a distinction compelled by the statutory language, and it is a distinction Congress could rationally make. As our discussion of § 6512(b)(3)(B) demonstrates, see *supra*, at 244–245, all a taxpayer need do to preserve the ability to seek a refund in the Tax Court is comply with the law and file a timely return.

We are bound by the language of the statute as it is written, and even if the rule Lundy advocates might "accor[d] with good policy," we are not at liberty "to rewrite [the] statute because [we] might deem its effects susceptible of improvement." *Badaracco*, *supra*, at 398. Applying § 6512(b)(3)(B) as Congress drafted it, we find that

the applicable look-back period in this case is two years, measured from the date of the mailing of the notice of deficiency. Accordingly, we find that the Tax Court lacked jurisdiction to award Lundy a refund of his overwithheld taxes. The judgment is reversed.

It is so ordered.

JUSTICE STEVENS, dissenting.

JUSTICE THOMAS has cogently explained why the judgment of the Court of Appeals should be affirmed. I therefore join his opinion. Because one point warrants further emphasis, I add this additional comment. In my view the Commissioner's position, and that of the majority, misses the forest by focusing on the trees. The predecessor to 26 U. S. C. § 6512(b) was amended to protect the interests of a taxpayer who receives a notice of deficiency from the IRS and later determines that the asserted underpayment was in fact an overpayment. *Post*, at 261–262. Congress expressly intended to guard against the possibility that the time for claiming a refund might lapse before the taxpayer in these circumstances realizes that he is entitled to claim a refund. As JUSTICE THOMAS has demonstrated, there is no need to read § 6512(b)(3)(B)—a provision designed to benefit the taxpayer who receives an unexpected deficiency notice—as giving the IRS an arbitrary right to shorten the taxpayer's period for claiming a refund if that taxpayer has not yet filed a return. The Court's reading of the statute converts an intended benefit into a handicap.

JUSTICE THOMAS, with whom JUSTICE STEVENS joins, dissenting.

Under the Internal Revenue Service's longstanding interpretation of 26 U. S. C. §§ 6511(a) and (b), Lundy would have collected a refund if he had filed suit in district court. The majority assumes, and I am prepared to hold, that that interpretation of § 6511 is correct. Section 6512(b)(3)(B) in-

corporates the look-back periods of § 6511 for proceedings to recover a refund in Tax Court. Section 6512(b)(3)(B) also contains some language that permits a taxpayer in certain circumstances to collect a refund although he has not actually filed an administrative claim (or has not filed one in what would be a timely fashion under § 6511(a)). Because in my opinion nothing in § 6512(b)(3)(B) suggests that Congress intended to *shorten* the look-back period in a proceeding in Tax Court, I would hold that Lundy is entitled to his refund.

I

Since 1976, the Service has taken the position that if a taxpayer files a delinquent return containing an accurate claim[1] for a refund within three years after the date on which the tax is deemed to have been overwithheld from his pay, then he can obtain a refund of that tax. See Rev. Rul. 76–511, 1976–2 Cum. Bull. 428 (construing 26 U. S. C. § 6511(a)). This is because "[a] return shall be a claim for refund if it contains a statement setting forth the amount determined as an overpayment and advising that such amount shall be refunded to the taxpayer," Rev. Rul. 76–511, 1976–2 Cum. Bull., at 428, and because a claim filed simultaneously with a return is filed "within 3 years from the time the return was filed" under 26 U. S. C. § 6511(a). The net effect of the interpretation of §§ 6511(a) and (b) adopted in Revenue Ruling 76–511 is that "if (i) a return is filed more than two but less than three years after it is due and (ii) a refund claim is filed contemporaneously or subsequently, 'the refund would [be] allowable since the overpayment would have been made within the 3-year period immediately preceding the filing of the claim.'" Brief for Petitioner 29, n. 11 (quoting

[1] I use the term "accurate claim" throughout to describe a claim for refund that (1) states the legally sufficient ground upon which the taxpayer eventually attempts to recover, and (2) contains enough detail to allow the taxpayer to obtain a refund in a district court or the Court of Federal Claims under 26 CFR § 301.6402–2(b)(1) (1995).

Rev. Rul. 76–511, 1976–2 Cum. Bull., at 429). The majority assumes that this interpretation of § 6511 is correct. See *ante*, at 251–252. Under this reading of § 6511, Lundy would have received a 3-year look-back period and a refund if he had filed a suit in a district court or the Court of Federal Claims, rather than filing a petition in the Tax Court.[2]

The harder step is determining whether the Service's interpretation of § 6511 itself is correct. Arguably, § 6511(a) is ambiguous as to what point in time is relevant in determining whether "no return was filed." The Ninth Circuit has held in *Miller* v. *United States*, 38 F. 3d 473, 475 (1994), that "[t]he point at which one must determine whether a return has or has not been filed [for purposes of § 6511(a)] must be two years after payment" of the taxes.

Congress' intent on this issue is difficult to discern. There is reason to think that Congress simply did not consider how being delinquent in filing a return would affect a taxpayer's right to recover a refund—in *any* forum. It appears that Congress chose the 3-year limitation period in § 6511(a) to correspond with the amount of time the Government has to make an assessment. See S. Rep. No. 1983, 85th Cong., 2d Sess., 98–99 (1958). As construed by the Service in Revenue Ruling 76–511, subsection (a) of § 6511 *does* create a limitation period for any taxpayer that will correspond with the period for assessment: the taxpayer has three years from the time he files his return to file a claim, and the Government usually has three years from the time the taxpayer files a return, for assessment. However, in cases where the taxpayer does not timely file his return, subsection (b) takes back the symmetry that subsection (a) bestows. In those

[2] The Commissioner concedes that Lundy's actual return constituted a claim for refund, see 26 CFR § 301.6402–3(a)(5) (1995); Rev. Rul. 76–511, 1976–2 Cum. Bull. 428, and "provided a sufficient basis for the determination of [his] correct liability," Brief for Petitioner 17, n. 6. The Commissioner also agrees that if Lundy receives a 3-year look-back period measured from the date of his actual return, then he will receive his refund.

cases, the taxpayer may only recover a refund of tax that was paid within the three years prior to his claim, yet the 3-year statute of limitation on assessments is triggered by the filing of the *return*.[3] These facts suggest that in enacting § 6511, Congress quite likely was simply not thinking about the effects on delinquent filers. Or, to put it another way, Congress may have had *no* intent regarding whether §§ 6511(a) and (b) would permit a taxpayer to take advantage of a 3-year look-back period where the taxpayer's return is not filed on time, and where the 3-year period thus cannot correlate with the Government's assessment period.

Nevertheless, in light of the language of § 6511(a), the absence of any reason to think that Congress affirmatively intended to prevent taxpayers who file their returns more than two years late (but less than three years late) from collecting refunds, and the Service's 20-year interpretation of § 6511 in its Revenue Ruling, I would interpret § 6511 in conformity with the Revenue Ruling.

II

Section 6512(b), rather than § 6511, directly governs the amount of a tax refund that may be awarded in the Tax Court. The most striking aspect of § 6512(b)(3)(B), however, is that it incorporates the look-back provisions of § 6511—it directs the Tax Court to determine what portion of tax was paid "within the period which would be applicable under section 6511(b)(2)." To my mind, then, the question is whether the additional language in § 6512(b)(3)(B) (that directing the Tax Court to pretend that "on the date of the mailing of the notice of deficiency a claim had been filed"), the statute's

[3] For example, if the taxpayer's return is due on April 15, 1990, he is deemed to pay on that date any tax previously withheld. If he files his return on April 16, 1990, he must still file his claim by April 15, 1993, but the Government will have until April 16, 1993, for assessment. The more delinquent the return is, the greater the disparity between the taxpayer's time for filing a claim and the Government's time for assessment.

legislative history, or other related statutory provisions indicate that Congress meant to prevent a taxpayer from receiving his refund from the Tax Court, even though the other courts could have ordered the refund.

Section 6512(b)(3)(B) does not merely incorporate § 6511, of course. Instead, § 6512(b)(3)(B) provides that the Tax Court is to determine what portion of tax was paid "within the period which would be applicable under section 6511(b)(2) . . . , *if on the date of the mailing of the notice of deficiency a claim had been filed.*" (Emphasis added.) The question is whether the addition of this language somehow prevents a taxpayer in Lundy's situation from collecting a refund in Tax Court. In asserting that § 6512(b)(3)(B) does not permit recovery here, the Commissioner must tacitly rely upon one of two theories of interpreting that provision—that adopted by the Tax Court or that adopted by the majority.

Under the Tax Court's interpretation in this case, "section 6512(b)(3)(B) directs us to focus on the situation as it would have been on a specified date—the date of the mailing of the notice of deficiency." 65 TCM 3011, 3014 (1993), ¶ 93,278 RIA Memo TC. According to the Tax Court, § 6512(b)(3)(B) "requires us to 'take a snapshot' of the situation" on the date the notice of deficiency was mailed. *Ibid.* Hence, the applicable look-back period is the period that *would have been applicable* under § 6511(b)(2), if on the date of the mailing of the notice of deficiency a claim had been filed *and if a determination as to the appropriate look-back period had also been made at that time*—that is, without the benefit of the information that a real claim was ultimately filed less than three years after the tax was paid. The majority's interpretation of § 6512(b)(3)(B) is only slightly different—in a way that does not help Lundy. Under that interpretation, "the 'claim' contemplated in that section [is to be] treated as the *only* mechanism for determining whether a taxpayer can recover a refund." *Ante*, at 242 (emphasis added).

Section 6512(b)(3)(B), does not, however, require the Tax Court to limit its consideration to events that occurred on or before the notice of deficiency was mailed. Indeed, if anything, the variance in tenses ("would *be* applicable . . . if . . . a claim *had been* filed") suggests that the Tax Court should determine the proper look-back period in the same way that courts normally determine the applicability of statutes of limitation—with whatever information it has at the time that it rules.

Nor does the language of § 6512(b)(3)(B) make clear any intent that the deemed claim of § 6512(b)(3)(B) be treated as the only mechanism for determining whether a taxpayer can recover a refund. The statute incorporates the look-back periods of § 6511 and then explicitly tells the Tax Court that, in applying § 6511, it should pretend that an event happened "whether or not" it actually did happen;[4] it does not tell the Tax Court to ignore events that did happen.[5] If Congress

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[4] Lundy argues that his actual claim superseded any claim "deemed" by § 6512(b)(3)(B) to have been filed on the date the notice of deficiency was mailed, and there is no reason to believe that a claim that would invoke the 3-year look-back period could not supersede a premature claim (*i. e.*, a claim that preceded a return) and thereby give the claimant the benefit of the full 3-year look-back period. Indeed, the Commissioner apparently agreed at oral argument that a taxpayer who files a nonreturn claim before filing a return, then *actually files a district court suit*, then dismisses that suit, then files a return containing an accurate claim, and finally files another suit in district court asserting this ground would be in the same position as one who had never filed the first premature claim. That is, assuming that Revenue Ruling 76–511 is a correct interpretation of a taxpayer's right to recover in district court, the taxpayer in this hypothetical would be permitted to recover if the return was filed within three years from the time the tax was paid. See Tr. of Oral Arg. 25–26.

[5] I think it odd that the majority, like the Commissioner, reads § 6512(b)(3)(B) as taking into account one real fact that the subsection does not explicitly tell the courts to consider in determining the look-back period (the fact that no real return had been filed at the time the notice of deficiency was mailed), but as not taking into account another real fact

had meant to say what the majority thinks it said, it could have added the words "no other claim is to be given effect." Or it might have directed the Tax Court to determine if the tax was paid "within the period which would be applicable under § 6511(b)(2) *with respect to* a claim filed on the date the notice of deficiency was mailed." Cf. n. 6, *infra* (26 U. S. C. § 6512(b)(3)(C) uses the phrase "period which would be applicable under section 6511(b)(2) . . . *in respect of* [a] claim" when denoting the period applicable to a particular claim).

The Commissioner notes that § 6512(b)(3)(C) provides for the situation in which "a refund claim had *actually* been filed '*before* the date of the mailing of the notice of deficiency'" and argues that § 6512(b) does not provide any "additional" jurisdiction in the Tax Court for refund claims made "after" the notice of deficiency is issued. Reply Brief for Petitioner 3–4 (emphasis in original).[6] But Lundy does not argue for "additional" jurisdiction; he asks only that § 6512(b)(3)(B), which appears to incorporate the look-back periods applicable in district court, not be construed as cutting off in the Tax Court a right to obtain a refund that he would have had in district court.

The Commissioner is perhaps making an *expressio unius* argument based upon the existence of § 6512(b)(3)(C). It is true that my interpretation of § 6512(b)(3)(B)—which permits a taxpayer to rely upon real claims as well as the deemed claim—might render § 6512(b)(3)(C) unnecessary.

(the fact that the taxpayer has filed a real return that also contains an accurate claim less than three years after the tax was paid).

[6] Section 6512(b)(3)(C) provides that the Tax Court may award tax paid "within the period which would be applicable under section 6511(b)(2) . . . in respect of any claim for refund filed within the applicable period specified in section 6511 and before the date of the mailing of the notice of deficiency," provided that the claim was still viable at the time the notice of deficiency was mailed.

But it appears that § 6512(b)(3)(C) was not added to carve out an exception to some supposed implicit requirement in § 6512(b)(3)(B) that the only recognizable claim in the Tax Court be the hypothetical one. Rather, it was meant to clarify that a certain application of § 6512(b)(3)(B) was permissible. The Senate Report that accompanied the 1962 amendment to § 6512(b), which added what is now § 6512(b)(3)(C), explained:

> "Since the 1954 enactment, . . . the Internal Revenue Service has in practice interpreted the law [*i. e.*, § 6512(b)(3)(B)] as permitting the refund of amounts where valid claims have been timely filed, as well as where these claims could have been filed on the date of the mailing of the notice of deficiency.
>
> "Your committee believes it is desirable to amend the language of present law (sec. 6512(b)([3])) to make it clear that the statute conforms with the interpretation of this section followed by the Service since the enactment of the 1954 Code." S. Rep. No. 2273, 87th Cong., 2d Sess., 15 (1962).

Rather than demonstrating that § 6512(b)(3)(B) was meant to prohibit recognition of "real" claims, this Report, and the Service's pre-1962 interpretation of § 6512(b)(3)(B) described therein, suggest the opposite: that subsection (b)(3)(B) did and does recognize "real" claims that would be recognized under § 6511.

Congress likely failed to state specifically in § 6512(b) whether a subsequently filed claim should be considered in Tax Court because it simply did not consider how that statute would be applied to the taxpayer who failed to file a timely return—just as it likely did not consider how § 6511 itself would be applied to the delinquent filer. Although Congress' intent, if any, as to how these statutes should apply where a late return is filed is obscure, its intent on two more general issues is more discernible.

First, Congress meant as a general matter to incorporate the look-back periods of § 6511(b)(2) into § 6512(b)(3)(B).[7] If Congress had intended the Commissioner's construction of § 6512(b)(3)(B), there would have been no reason to refer to § 6511; instead, it could have stated the look-back periods much more simply and clearly, *e. g.*, by specifying that a 3-year look-back period should apply if the taxpayer filed a return before the notice of deficiency was mailed, and that otherwise a 2-year look-back period should apply. Although, as noted below, Congress clearly intended to augment the taxpayer's ability to recover a refund in Tax Court proceedings in certain circumstances, there is no evidence of any intent to prevent the taxpayer from recovering in Tax Court a refund that he could have obtained in a suit in district court.

Second, by adding the "if" clause in § 6512(b)(3)(B), Congress clearly did mean to favor a taxpayer who is notified that he owes the Government money, is effectively forced to go to court to contest the deficiency, and is required to put together his records and possibly litigate against the Government, only to discover during that litigation that it is *he* who has provided a loan to the *Government*. The deemed claim of § 6512(b)(3)(B) is intended to protect the filer of a timely return who receives a notice of deficiency in the mail too late to gather his wits, review his papers more carefully, and file an accurate claim for a refund (or an accurate assertion of a right to a refund in a Tax Court petition) prior to the expiration of the 3-year period. When Congress amended 26

[7] The Fourth Circuit apparently held that, if a taxpayer files a return prior to or simultaneously with filing his Tax Court petition, he will always get the benefit of a 3-year look-back period ending on the date the notice of deficiency was mailed. See 45 F. 3d 856, 868 (1995). This interpretation would protect a taxpayer who, unlike Lundy, filed a return more than three years after the tax was paid. The issue need not be decided in this case. Lundy did file a return containing an accurate claim for refund within three years of the time his tax was paid, and he would have received a refund if he had sued in district court.

U. S. C. §322(d), the predecessor of §6512(b), in 1942, the House Report explained:

> "In order to give the taxpayer the privilege to claim an overpayment before the [Tax Court] by such amendments to his petitions as may be allowed under the rules of the [Tax Court], without the period of limitations running against the refund of such overpayment after the notice of deficiency is mailed, [§322(d) is amended] to provide that the period of limitations which determines the portion of the tax which may be credited or refunded is measured from the date the notice of deficiency is mailed, rather than from the date the petition is filed." H. R. Rep. No. 2333, 77th Cong., 2d Sess., 121 (1942).[8]

Because §6512(b)(3)(B) incorporates the look-back periods of §6511(b) and because it appears that the variance in the Tax Court statute was meant to be *more* protective of the taxpayer litigating in the Tax Court in certain circumstances, I would hold that Lundy may recover his refund.

III

Lundy argues that he was no more negligent for failing to file his return within three years than he was for failing to file it within two years, and that it would be irrational for Congress to forfeit Lundy's refund simply because the Service "beat him to the punch" in sending him a deficiency notice. I disagree. Allowing a delinquent taxpayer a shorter period of time within which to file his claim would not be

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[8] The majority reads the Fourth Circuit's opinion as barring a taxpayer's reliance upon the deemed claim in meeting §6511's requirements to obtain the 3-year look-back period (and as thus preventing a taxpayer who filed a timely return but filed a real claim more than three years later from recovering his refund in Tax Court). *Ante*, at 247–248. If that was indeed the Fourth Circuit's ruling, then it clearly was incorrect. Under my interpretation, either the deemed claim *or* a real claim can enable a taxpayer to recover his refund in the Tax Court.

irrational, nor would giving a taxpayer an incentive to submit his return before the Service calculates his tax obligation, locates him, and sends him a deficiency notice. Thus, for example, Congress might well have provided that if the notice of deficiency is sent prior to the taxpayer's filing his return, the taxpayer will have only a 2-year look-back period in *any* forum.

What would not make much sense to me, however, would be deliberately to adopt this scheme only in Tax Court proceedings—*i. e.*, to punish only the taxpayer whose cash reserves make it impossible for him to provide the Government a still larger loan in any amount it demands while the taxpayer pursues relief in the district court or Court of Federal Claims, the taxpayer who is too unsophisticated to realize that a suit in district court could preserve his right to a refund, and the taxpayer whose expected refund is too small in relation to attorney's fees and other costs to justify a suit in district court. Obviously Congress could constitutionally have adopted such a strange scheme, but I will not simply presume that it has done so. Indeed, the Commissioner does not suggest any reason why Congress would have intended to do this; rather, it merely notes that there are many (generally unrelated) differences between Tax Court and district court proceedings and insists that the plain language of §§ 6511 and 6512(b)(3)(B) mandates this result.

As noted previously, the harder step for me is the antecedent one of determining that § 6511 itself permits a refund in these circumstances, because it does not appear to me that either § 6511 or § 6512(b) was written with delinquent filers in mind. Once that hurdle is cleared, however, it makes no sense to bar the taxpayer's recovery in the Tax Court alone, when the language of § 6512(b)(3)(B) does not mandate this result and when there is no reason to think that Congress intended it.

Syllabus

BANK ONE CHICAGO, N. A. *v.* MIDWEST BANK & TRUST CO.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 94–1175. Argued November 28, 1995—Decided January 17, 1996

Petitioner Bank One sued respondent Midwest Bank, alleging that, in dishonoring a check Bank One had submitted for collection, Midwest failed to meet its obligations under a regulation prescribed by the Board of Governors of the Federal Reserve System (Board) pursuant to the Expedited Funds Availability Act (Act), 12 U. S. C. §§ 4001–4010. The District Court entered summary judgment for Bank One, but the Seventh Circuit vacated that judgment and ordered the action dismissed for lack of subject-matter jurisdiction. The appellate court focused on three of § 4010's civil liability provisions: § 4010(a) renders "any depository institution which fails to comply with any requirement imposed under this [Act or its implementing regulations] with respect to any person other than another depository institution . . . liable [in damages] to such person"; § 4010(f) empowers the Board to "impose on or allocate among [banks] the risks of loss and liability in connection with any aspect of the [check] payment system"; § 4010(d) provides for concurrent federal-court and state-court jurisdiction over "[a]ny action under this section." These provisions, the court concluded, demonstrate that the Act authorizes original federal-court jurisdiction only when a "person other than [a] depository institution" sues a "depository institution," § 4010(a), *i. e.*, principally, when a depositor sues a bank. Interbank disputes, the court said, are to be "handled administratively" before the Board or perhaps in state court.

Held: The Act provides for federal-court jurisdiction not only in suits between customers and banks, but also in cases initiated by one bank against another bank. Section 4010's language, reinforced by its title and drafting history, impel reading both subsection (a), which makes banks liable to "any person other than another depository institution," and subsection (f), which governs banks' liability *inter se*, as authorizing claims for relief enforceable in federal court as prescribed in subsection (d). Section 4010 is entitled "Civil liability"; its purpose is to afford private parties a claim for relief based on violations of the Act and its implementing regulations. Both subsections (a) and (f) impose civil liability for such violations. Though the two prescriptions are not paral-

Syllabus

lel—most prominently, subsection (f) vests the Board with authority to establish the governing liability standards—they serve the same key purpose: Both permit recovery of damages caused by a regulated party's failure to comply with the Act. Section 4010's drafting history suggests that interbank liability rules were to be developed administratively because Congress recognized that interbank disputes arising out of the check payment system may be more complex than those involving banks and depositors, not because Congress intended to create remedies that would be adjudicated in different forums. It is implausible that Congress directed the Board to handle such disputes administratively, for § 4010 does not explicitly confer adjudicatory authority on the Board, nor set forth the relevant procedures for resolution of private disputes. See, *e. g.*, *American Airlines, Inc.* v. *Wolens*, 513 U. S. 219; *Coit Independence Joint Venture* v. *FSLIC*, 489 U. S. 561, 574. The interpretation of § 4010 offered by Bank One and the United States is sensible because it allows all check-related claims arising out of the same transaction to be brought in a single federal or state court. The Seventh Circuit's reading, in contrast, would yield an incoherent jurisdictional scheme, whereby bank-depositor claims would be adjudicated in one such court, interbank claims under the Act would originate before the Board, and interbank claims under state law would presumably have to be raised in a separate state-court proceeding. Pp. 270–276.

30 F. 3d 64, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, KENNEDY, SOUTER, THOMAS, and BREYER, JJ., joined, and in which SCALIA, J., joined in part. STEVENS, J., filed a concurring opinion, in which BREYER, J., joined, *post*, p. 276. SCALIA, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 279.

Robert A. Long, Jr., argued the cause for petitioner. With him on the briefs were *Mark A. Weiss* and *Jeffrey S. Blumenthal*.

Jeffrey P. Minear argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Days*, *Assistant Attorney General Hunger*, *Deputy Solicitor General Bender*, *Mark B. Stern*, and *Douglas B. Jordan*.

Robert G. Epsteen argued the cause for respondent. With him on the brief were *Alan H. Zenoff* and *A. J. Zenoff.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the Expedited Funds Availability Act, 12 U. S. C. §§ 4001–4010, a 1987 law designed to accelerate the availability of funds to bank depositors and to improve the Nation's check payment system. We confront a jurisdictional question regarding the Act's civil liability provisions, in particular §§ 4010(a), (d), and (f): Is federal-court subject-matter jurisdiction under those provisions confined to suits initiated by bank customers against banks, as the Court of Appeals held, or do federal courts have jurisdiction, as well, over suits brought by one bank against another depository institution? We hold that the Act provides for federal-court jurisdiction not only in suits between customers and banks, but also in cases initiated by one bank against another bank.

I

Historically, the Nation's check payment system has been controlled primarily by state law, particularly, in recent decades, by articles 3 and 4 of the Uniform Commercial Code (UCC). Although federal regulations have long supplemented state law in this area, see most notably Regulation J, 12 CFR pt. 210 (1995), the UCC has supplied the basic legal framework for bank deposits and check collections. But despite UCC controls, the check-clearing process too often lagged, taking days or even weeks to complete. To protect themselves against the risk that a deposited check would be returned unpaid, banks typically placed lengthy "holds" on deposited funds. Bank customers, encountering long holds, complained that delayed access to deposited funds

*Briefs of *amici curiae* urging reversal were filed for the Electronic Check Clearing House Organization by *Robert G. Ballen*, *Gilbert T. Schwartz*, and *Dina J. Moskowitz*; and for the New York Clearing House Association by *Philip L. Graham, Jr.*, and *Norman R. Nelson*.

impeded the expeditious use of their checking accounts. See S. Rep. No. 100–19, pp. 25–26 (1987).

In 1987, Congress responded by passing the Expedited Funds Availability Act (EFA Act or Act), 101 Stat. 635, as amended, 12 U. S. C. §§ 4001–4010. The Act requires banks[1] to make deposited funds available for withdrawal within specified time periods, subject to stated exceptions. See §§ 4002, 4003. To reduce banks' risk of nonpayment, the Act grants the Board of Governors of the Federal Reserve System (Federal Reserve Board or Board) broad authority to prescribe regulations expediting the collection and return of checks. § 4008. The Board and other banking agencies are authorized to enforce the Act's provisions administratively, by issuing cease-and-desist orders and imposing other civil sanctions. See § 4009(a) (incorporating administrative enforcement provisions of 12 U. S. C. § 1818).

The Act's final section contains civil liability provisions, which are the focus of this case. See § 4010. Subsection 4010(a) addresses a bank's liability to persons other than another depository institution. It provides, in pertinent part:

> "Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this chapter or any regulation prescribed under this chapter with respect to any person other than another depository institution is liable to such person in an amount equal to the sum of [a specified measure of damages]."

Subsection 4010(f) governs a bank's liability to another bank for violation of the Act's provisions. It states:

> "The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the [check] payment

[1] The EFA Act applies to "depository institution[s]," as that term is defined in 12 U. S. C. § 461(b)(1)(A). See 12 U. S. C. § 4001(12). For simplicity, we often use the term "bank" instead.

> system . . . . Liability under this subsection shall not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability."

Subsection 4010(d) provides for concurrent federal-court and state-court jurisdiction over civil liability suits:

> "Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved."

The Federal Reserve Board has implemented the EFA Act through Regulation CC, 12 CFR pt. 229 (1995). Subpart C of Regulation CC contains rules to expedite the collection and return of checks. It requires banks, among other things, to return checks "in an expeditious manner," § 229.30(a); provide prompt notice of nonpayment of certain checks, § 229.33(a); and include in the notice the reason for nonpayment, § 229.33(b)(8). Section 229.38 states standards governing interbank liability. It instructs banks to "exercise ordinary care and act in good faith in complying with the requirements of [Subpart C]," and further prescribes (in relevant part): "A bank that fails to exercise ordinary care or act in good faith . . . may be liable to" other depository institutions. § 229.38(a). Section 229.38 repeats the jurisdictional provision Congress placed in 12 U. S. C. § 4010(d), *i. e.*, the regulation provides for concurrent federal-court and state-court jurisdiction over "[a]ny action under this subpart." 12 CFR § 229.38(g) (1995).

II

This controversy stems from an interbank dispute regarding a dishonored check. Petitioner Bank One Chicago sued respondent Midwest Bank & Trust Co. in Federal District Court, alleging that Midwest had failed to comply with its

obligations under Regulation CC. The facts underlying the suit are uncontested. A customer of Bank One deposited a check for $64,294.27 drawn on an account at Midwest. Bank One forwarded the check through the Federal Reserve System for collection, but Midwest returned it unpaid because Bank One's endorsement stamp was illegible. Bank One properly endorsed the check, resubmitted it for collection, and made the funds available to the Bank One customer. Midwest again returned the check unpaid, this time stating that the payor's account lacked sufficient funds to cover the check. By then, however, Bank One's customer had withdrawn most of the funds from its account. Bank One sought to recover the amount it paid out to its customer against funds that remain uncollected.

On cross-motions for summary judgment, the District Court ruled for Bank One. That court centrally determined: "Midwest did not act with ordinary care [when it] return[ed] the check for guarantee of endorsement without first checking the sufficiency of the funds in support of the check." App. to Pet. for Cert. 12. To satisfy the payor bank's obligation under 12 CFR § 229.38(a) (1995), the court explained, Midwest should have notified Bank One of the insufficient funds problem the first time Midwest returned the check. By failing to do so, the court concluded, Midwest had caused Bank One to lose $43,912.06. The court accordingly entered judgment for Bank One in that amount. App. to Pet. for Cert. 15. Midwest appealed.

The Court of Appeals for the Seventh Circuit did not reach the merits of the appeal. Instead, the appellate court raised at oral argument, on its own motion, a threshold question of subject-matter jurisdiction. After affording the parties an opportunity to file memoranda, the Court of Appeals vacated the judgment for Bank One and ordered the District Court to dismiss the action for lack of jurisdiction. *First Illinois Bank & Trust* v. *Midwest Bank & Trust Co.*, 30 F. 3d 64, 65 (1994).

Examining the civil liability provisions of 12 U. S. C. § 4010, the Court of Appeals concluded that the EFA Act provides for federal-court jurisdiction only when a "person other than [a] depository institution" sues a "depository institution," see 12 U. S. C. § 4010(a), *i. e.*, principally, when a depositor sues a bank. 30 F. 3d, at 65. "Disputes such as [Bank One's complaint against Midwest], between members of the Federal Reserve System," the Seventh Circuit stated, "are to be handled administratively before the Board of Governors of the Federal Reserve System . . . (or perhaps in state court)." *Ibid.* The court added, in response to a submission by the Federal Reserve Board: "Although the Board of Governors has informed us that no mechanism is currently available for administrative resolution of such [interbank] disputes, the Board's differing interpretation of this statute cannot confer jurisdiction upon the Court." *Ibid.*

We granted certiorari. 515 U. S. 1157 (1995). Satisfied that the District Court had adjudicatory authority in this case, we now reverse the judgment of the Court of Appeals.

III

The Court of Appeals and the parties advance diverse readings of 12 U. S. C. § 4010. According to the Seventh Circuit, § 4010 authorizes original federal-court jurisdiction only in actions between a bank and a person other than a bank. Subsection 4010(a) alone, in the Court of Appeals' view, provides for rights immediately enforceable in federal court, and that subsection excludes interbank suits, for it applies only to "disputes between 'any depository institution' and 'any person other than another depository institution.'" 30 F. 3d, at 65 (quoting § 4010(a)). Although § 4010(f) provides for interbank liability, the Court of Appeals read that subsection to authorize only administrative adjudication. In the Seventh Circuit's words:

> "The purpose of the [EFA] Act is to require banks to make funds available to depositors quickly. Thus the

> depositors have rights, enforceable in court, while the banks have obligations, which the Federal Reserve Board may establish by regulation and enforce in administrative proceedings." *Ibid.*

The Court of Appeals did not say whether its reading of the statute encompassed an ultimate role for federal courts, as judicial reviewers of the Board's administrative adjudications.

Midwest agrees with the Seventh Circuit that § 4010(a) alone describes court-enforceable EFA Act rights—rights that depositors can assert against banks. But unlike the Court of Appeals, Midwest is uncertain whether § 4010(f) authorizes administrative adjudication by the Federal Reserve Board. See Tr. of Oral Arg. 33–34. Remaining neutral on the Board's competence as a forum for resolving controversies between private parties, Midwest urges that the issue before this Court "is not whether the Board may adjudicate the interbank dispute between petitioner and respondent," but whether "the EFA Act confers on the federal district court jurisdiction to decide this dispute." Brief for Respondent 23. In Midwest's view, Congress intended interbank disputes to be resolved primarily in state rather than federal courts. *Id.*, at 5–6.[2]

Both Bank One and the United States, as *amicus curiae*, agree with Midwest that state courts have jurisdiction over interbank check payment disputes. But Bank One and the United States maintain that § 4010(f), by providing for interbank "liability" up to the amount of the check as well as "other damages" in certain cases, authorizes interbank actions for violations of liability regulations prescribed by the

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[2] Midwest observes that UCC § 4–103, 2B U. L. A. § 4–103 (1991), treats Federal Reserve Board regulations as "agreements" between participants in the check payment system; damages for violation of the terms of such agreements, Midwest further asserts, would be recoverable as a matter of state law. See, *e. g.*, *United Postal Savings Assn.* v. *Royal Bank Mid-County*, 784 S. W. 2d 906 (Mo. App. 1990).

Federal Reserve Board. And they regard § 4010(d), which speaks of "[a]ny action under [§ 4010]," as instructing that suits under § 4010(f), as well as those under § 4010(a), "may be brought in any United States district court."

We hold that the District Court, in the instant case, correctly comprehended its adjudicatory authority, and that the Court of Appeals erred when it ordered dismissal of the action for lack of jurisdiction. The language of § 4010, reinforced by the title of the provision and its drafting history, impel reading both subsections (a) and (f) as authorizing claims for relief enforceable in federal court as prescribed in subsection (d).

IV

Section 4010 is entitled "Civil liability"; its purpose is to afford private parties a claim for relief based on violations of the statute and its implementing regulations. Subsection (a) affords a claim for relief by making banks liable to "any person other than another depository institution." It refers to both individual and class actions, and specifies the measure of damages recoverable in such actions. All agree that suits described in subsection (a) may be brought in federal court under § 4010(d).

Subsection (f) governs the area of liability not covered by subsection (a): banks' liability *inter se*. It authorizes the Federal Reserve Board to "impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the [check] payment system," and states that "[l]iability under this subsection" shall be limited to the amount of the check, except in cases involving bad faith. In our view, subsection (f), like subsection (a), provides a statutory basis for claims for relief cognizable in federal court under § 4010(d). Both subsections impose civil liability for violation of the EFA Act and its implementing regulations. Though the two prescriptions are not parallel—most prominently, subsection (f) vests the Board with authority to establish the governing liability standards—

they serve the same key purpose: Both permit recovery of damages caused by a regulated party's failure to comply with the Act.

The drafting history of § 4010 casts some light on the discrete composition and separate placement of subsections (a) and (f). Under the versions of the statute originally passed by each House of Congress, subsection (a) encompassed actions between banks and persons other than banks, as well as interbank actions. The Conference Committee narrowed subsection (a) by excluding interbank actions, but simultaneously inserted, still under the section heading "Civil liability," a new subsection (f). Compare H. R. Rep. No. 100–52, p. 10 (1987), and S. 790, 100th Cong., 1st Sess., § 609(a) (1987), with H. R. Conf. Rep. No. 100–261, pp. 105–106 (1987).

These changes reflect recognition that interbank disputes arising out of the check payment system may be more complex than those involving banks and depositors; such disputes, therefore, may warrant regulatory standards, set by an expert agency, to fill statutory interstices. Thus, in subsection (f), Congress delegated to the Federal Reserve Board authority to establish rules allocating among depository institutions "the risks of loss and liability" relating to the payment and collection of checks. 12 U. S. C. § 4010(f). Having conferred this authority on the Board, Congress sensibly consolidated in subsection (f) aspects of § 4010 that relate to interbank disputes—liability limits as well as rulemaking authority.

Congress no doubt intended rules regarding interbank losses and liability to be developed administratively. But nothing in § 4010(f)'s text suggests that Congress meant the Federal Reserve Board to function as both regulator and adjudicator in interbank controversies. Rather, subsections (f) and (d) fit a familiar pattern: agency regulates, court adjudicates. See, *e. g.*, Securities Act of 1933, 15 U. S. C. § 77j(c) (mandating compliance with disclosure requirements established by Securities and Exchange Commission); § 77k (creat-

ing right of action in "any court of competent jurisdiction" for violation of those requirements). As the United States persuasively contends: "Congress left it to the Board to determine the liability standards for losses in the inter-bank payment system because of the greater complexity of that subject, and not because Congress intended to create remedies that would be adjudicated in different fora." Brief for United States as *Amicus Curiae* 13.

We find implausible the Court of Appeals' interpretation of § 4010, under which interbank disputes would be "handled administratively" before the Federal Reserve Board. See 30 F. 3d, at 65. Our cases have not been quick to infer agency authority to adjudicate private claims. In *Coit Independence Joint Venture* v. *FSLIC*, 489 U. S. 561 (1989), for example, we held that the Federal Savings and Loan Insurance Corporation (FSLIC) lacked statutory authority to adjudicate creditors' claims against insolvent savings and loan associations. *Id.*, at 572. We observed in *Coit*, after examining the relevant statutory provisions, that "when Congress meant to confer adjudicatory authority on FSLIC it did so explicitly and set forth the relevant procedures in considerable detail." *Id.*, at 574.

Similarly, in *American Airlines, Inc.* v. *Wolens*, 513 U. S. 219 (1995), we rejected American Airlines' argument that Congress intended the Department of Transportation (DOT) to serve as the exclusive adjudicator of air carrier contract disputes. *Id.*, at 230–232. We noted that the DOT had "neither the authority nor the apparatus required to superintend a contract dispute resolution regime," *id.*, at 232, and accordingly declined to "foist on the DOT work Congress has neither instructed nor funded the Department to do." *Id.*, at 234.

As in *Coit* and *Wolens*, we find no secure signal here that Congress intended to assign to the Federal Reserve Board responsibility for the adjudication of private claims. The

EFA Act's civil liability section, 12 U. S. C. § 4010, does not explicitly confer adjudicatory authority on the Board, nor "set forth the relevant procedures" for resolution of private disputes. See *Coit*, 489 U. S., at 574.[3] Section 4010, we stress, contrasts conspicuously with statutes in which Congress *has* given the Board adjudicatory authority. See, *e. g.*, Bank Holding Company Act of 1956, 12 U. S. C. § 1843(c)(8) (authorizing Board to determine whether bank holding company may acquire shares in nonbanking entity); § 1848 (providing for judicial review of such determinations); cf. Commodity Exchange Act, 7 U. S. C. § 18 (specifying detailed procedures governing adjudication of private disputes by the Commodity Futures Trading Commission).

Finally, we note that the interpretation of § 4010 offered by Bank One and the United States is a sensible one. All check-related claims arising out of the same transaction may be brought in a single forum—either in federal court (which would have supplemental jurisdiction over state-law claims, see 28 U. S. C. § 1367), or in state court. The reading of the statute proposed by the Seventh Circuit, in contrast, would yield an incoherent jurisdictional scheme. Bank-depositor claims would be adjudicated in one forum (state or federal court), while interbank claims under the EFA Act would originate in another (before the Federal Reserve Board). And interbank claims under state law would presumably have to be raised in a separate state-court proceeding. Even if the text of § 4010 could plausibly be read to create

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[3] The Court of Appeals cited 12 U. S. C. § 4009(c)(1) as a potential source of the Board's authority to adjudicate private disputes. *First Illinois Bank & Trust* v. *Midwest Bank & Trust Co.*, 30 F. 3d 64, 65 (CA7 1994). But as the United States points out, that section merely authorizes the Board to use traditional administrative enforcement tools in securing compliance with the EFA Act. Brief for United States as *Amicus Curiae* 19. Section 4009(c) "does not create any mechanism for the adjudication of inter-bank civil liability claims." *Id.*, at 19–20.

this decidedly inefficient jurisdictional scheme, we would hesitate to attribute such a design to Congress.[4]

* * *

For the reasons stated, the judgment of the Court of Appeals for the Seventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, concurring.

Given the fact that the Expedited Funds Availability Act was a measure that easily passed both Houses of Congress,[1] JUSTICE SCALIA is quite right that it is unlikely that more than a handful of legislators were aware of the Act's drafting history. He is quite wrong, however, to conclude from that observation that the drafting history is not useful to conscientious and disinterested judges trying to understand the statute's meaning.

Legislators, like other busy people, often depend on the judgment of trusted colleagues when discharging their official responsibilities. If a statute such as the Expedited Funds Availability Act has bipartisan support and has been carefully considered by committees familiar with the subject matter, Representatives and Senators may appropriately rely on the views of the committee members in casting their votes. In such circumstances, since most Members are content to endorse the views of the responsible committees, the

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[4] Bank One and *amicus* New York Clearing House Association contend that 28 U. S. C. § 1331 provides an independent basis for federal-court jurisdiction here. Satisfied that Bank One properly relied on 12 U. S. C. § 4010, we need not and do not pass on this contention.

[1] The House passed the Act by a vote of 382 to 12. 133 Cong. Rec. 22110 (1987). The Senate approved the measure 96 to 2. *Id.*, at 22181.

intent of those involved in the drafting process is properly regarded as the intent of the entire Congress.

In this case, as the Court and JUSTICE SCALIA agree, *ante*, at 273–274, *post*, at 282, the statutory text of § 4010 supports petitioner's construction of the Act. However, the placement of the authorization for interbank litigation in subsection (f) rather than subsection (a) lends some support to the Court of Appeals' interpretation. When Congress creates a cause of action, the provisions describing the new substantive rights and liabilities typically precede the provisions describing enforcement procedures; subsection (f) does not conform to this pattern. The drafting history, however, provides a completely satisfactory explanation for this apparent anomaly in the text.

JUSTICE SCALIA nevertheless views the Court's reference to this history as unwise. As he correctly notes, the simultaneous removal of the provision for interbank liability from subsection (a) and the addition of a new subsection (f) support another inference favoring the Court of Appeals' construction of the statute: that the drafters intended to relegate the resolution of interbank disputes to a different tribunal. JUSTICE SCALIA is mistaken, however, in believing that this inference provides the "most plausible explanation" for the change, *ibid.* In my judgment the Court has correctly concluded that the most logical explanation for the change is a decision to consolidate the aspects of § 4010 that relate to interbank disputes—liability limits and rulemaking authority—in the same subsection. *Ante*, at 273. Thus, the net result of the inquiry into drafting history is to find the answer to an otherwise puzzling aspect of the statutory text.

I must also take exception to JUSTICE SCALIA's psychoanalysis of judges who examine legislative history when construing statutes. He confidently asserts that we use such history as a makeweight after reaching a conclusion on the

basis of other factors. I have been performing this type of work for more than 25 years and have never proceeded in the manner JUSTICE SCALIA suggests. It is quite true that I have often formed a tentative opinion about the meaning of a statute and thereafter examined the statute's drafting history to see whether the history supported my provisional conclusion or provided a basis for revising it. In my judgment, a reference to history in the Court's opinion in such a case cannot properly be described as a "makeweight." That the history *could* have altered my opinion is evidenced by the fact that there are significant cases, such as *Green* v. *Bock Laundry Machine Co.*, 490 U. S. 504 (1989), in which the study of history *did* alter my original analysis. In any event, I see no reason why conscientious judges should not feel free to examine all public records that may shed light on the meaning of a statute.

Finally, I would like to suggest that JUSTICE SCALIA may be guilty of the transgression that he ascribes to the Court. He has confidently asserted that the legislative history in this case and in *Wisconsin Public Intervenor* v. *Mortier*, 501 U. S. 597 (1991), supports a result opposite to that reached by the Court. While I do not wish to reargue the *Mortier* case, I will say that I remain convinced that a disinterested study of the entire legislative history supports the conclusion reached by the eight-Member majority of the Court. Even if his analysis in both cases is plausible, it is possible that JUSTICE SCALIA's review of the history in *Mortier* and in this case may have been influenced by his zealous opposition to any reliance on legislative history in any case. In this case, as in *Mortier*, his opinion is a fine example of the work product of a brilliant advocate.[2] It is the Court's opinion,

[2] Justice Jackson, whose opinion in *United States* v. *Public Util. Comm'n of Cal.*, 345 U. S. 295 (1953), JUSTICE SCALIA cites, was also a brilliant advocate. Like JUSTICE SCALIA, he recognized the danger of indiscriminate use of legislative history, but unlike JUSTICE SCALIA he also recognized that it can be helpful in appropriate cases. See *Schwegmann Brothers* v. *Calvert Distillers Corp.*, 341 U. S. 384, 395–396 (1951).

however, that best sets forth the reasons for reversing the judgment of the Court of Appeals.

JUSTICE BREYER has authorized me to say that he agrees with the foregoing views.

JUSTICE SCALIA, concurring in part and concurring in the judgment.

I agree with the Court's opinion, except that portion of it which enters into a discussion of "[t]he drafting history of § 4010." *Ante*, at 273. In my view a law means what its text most appropriately conveys, whatever the Congress that enacted it might have "intended." The law *is* what the law *says*, and we should content ourselves with reading it rather than psychoanalyzing those who enacted it. See *United States* v. *Public Util. Comm'n of Cal.*, 345 U. S. 295, 319 (1953) (Jackson, J., concurring). Moreover, even if subjective intent rather than textually expressed intent were the touchstone, it is a fiction of Jack-and-the-Beanstalk proportions to assume that more than a handful of those Senators and Members of the House who voted for the final version of the Expedited Funds Availability Act, and the President who signed it, were, when they took those actions, aware of the drafting evolution that the Court describes; and if they were, that their actions in voting for or signing the final bill show that they had the same "intent" which that evolution suggests was in the minds of the drafters.

JUSTICE STEVENS acknowledges that this is so, but asserts that the intent of a few committee members is nonetheless dispositive because legislators are "busy people," and "most Members [of Congress] are content to endorse the views of the responsible committees." *Ante*, at 276. I do not know the factual basis for that assurance. Many congressional committees tend not to be representative of the full House, but are disproportionately populated by Members whose constituents have a particular stake in the subject matter—agriculture, merchant marine and fisheries, science and technology, etc. I think it quite unlikely that the House of Rep-

resentatives would be "content to endorse the views" that its Agriculture Committee would come up with if that committee knew (as it knows in drafting committee reports) that those views need not be moderated to survive a floor vote. And even *more* unlikely that the *Senate* would be "content to endorse the views" of the House Agriculture Committee. But assuming JUSTICE STEVENS is right about this desire to leave details to the committees, the very first provision of the Constitution forbids it. Article I, § 1, provides that "[a]ll legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." It has always been assumed that these powers are nondelegable—or, as John Locke put it, that legislative power consists of the power "to make laws, . . . not to make legislators." J. Locke, Second Treatise of Government 87 (R. Cox ed. 1982). No one would think that the House of Representatives could operate in such fashion that only the broad outlines of bills would be adopted by vote of the full House, leaving minor details to be written, adopted, and voted upon only by the cognizant committees. Thus, if legislation consists of forming an "intent" rather than adopting a text (a proposition with which I do not agree), Congress cannot leave the formation of that intent to a small band of its number, but must, as the Constitution says, form an intent of the *Congress*. There is no escaping the point: Legislative history that does not represent the intent of the whole Congress is nonprobative; and legislative history that does represent the intent of the whole Congress is fanciful.

Our opinions using legislative history are often curiously casual, sometimes even careless, in their analysis of what "intent" the legislative history shows. See *Wisconsin Public Intervenor* v. *Mortier*, 501 U. S. 597, 617–620 (1991) (SCALIA, J., concurring). Perhaps that is because legislative history is in any event a makeweight; the Court really makes up its mind on the basis of other factors. Or perhaps it is

simply hard to maintain a rigorously analytical attitude, when the point of departure for the inquiry is the fairyland in which legislative history reflects what was in "the Congress's mind."

In any case, it seems to me that if legislative history is capable of injecting into a statute an "intent" that its text alone does not express, the drafting history alluded to in today's opinion should have sufficed to win this case for respondent. It shows that interbank liability was not merely *omitted* from subsection (a), entitled "Civil liability." It was *removed* from that subsection, *simultaneously with the addition of subsection (f)*, 12 U. S. C. § 4010(f), which gave the Federal Reserve Board power to "impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system" (language that is at least as compatible with adjudication as with rulemaking). Now if the only function of this new subsection (f) had been to give the Board *rulemaking* power, there would have been no logical reason to eliminate interbank disputes from the "Civil liability" subsection, whose basic prescription (banks are civilly liable for violations of the statute or of rules issued under the statute[1]) applies no less in the interbank than in the bank-customer context. Nor can the removal of interbank disputes from subsection (a) be explained on the ground that Congress had decided to apply different damages limits to those disputes. The former subsection (a), in both House and Senate versions, already provided varying damages limits for individual suits and class actions, see S. 790, 100th Cong., 1st Sess., § 609(a) (1987); H. R. Rep. No. 100–52, pp. 10–11 (1987), and it would have been logical to set forth the newly desired interbank variation there as well, leaving to the new subsection (f) only

[1] The Senate version of subsection (a) did not refer to violations of rules, see S. 790, 100th Cong., 1st Sess., § 609(a) (1987), but it was the House version of subsection (a), see H. R. Rep. No. 100–52, p. 10 (1987), which did specifically mention rules, that was retained.

the conferral of rulemaking authority. Or, if it were thought essential to "consolidate" all the details of interbank disputes in subsection (f), it would still not have been necessary to *specifically exclude* interbank disputes from the general "civil liability" pronouncement of subsection (a). The prologue of that subsection, "[e]xcept as otherwise provided in this section," would have made it clear that interbank civil liability was limited as set forth in subsection (f). The most plausible explanation for specifically excluding interbank disputes from the "Civil liability" subsection when subsection (f) was added—and for avoiding any reference to "civil liability" in subsection (f) itself—is an intent to commit those disputes to a totally different regime, *i. e.*, to Board adjudication rather than the normal civil-liability regime of the law courts.[2]

Today's opinion does not consider this argument, but nonetheless refutes it (in my view) conclusively. After recounting the drafting history, the Court states that "*nothing in § 4010(f)'s text* suggests that Congress meant the Federal Reserve Board to function as both regulator and adjudicator

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[2] I have explained why the "consolidation" explanation developed by JUSTICE STEVENS, *ante*, at 277, does not ring true. Even if it did, however, it would not be accurate to say that the legislative history thus provides "the answer to an otherwise puzzling aspect of the statutory text," *ibid.* What JUSTICE STEVENS calls "the answer" (viz., the wish to consolidate all the interbank provisions in one section) is no more evident from the legislative history than it is from the face of the statute itself. Nothing in the legislative history says "we will consolidate interbank matters in a new subsection (f)"; JUSTICE STEVENS simply surmises, from the fact that the final text contains such consolidation, that consolidation was the reason for excluding interbank disputes from subsection (a). What investigation of legislative history has produced, in other words, is not an answer (*that*, if there is one, is in the *text*), but rather the puzzlement to which an answer is necessary: Why were interbank disputes eliminated from subsection (a) when subsection (f) was adopted? Being innocent of legislative history, I would not have known of that curious excision if the Court's opinion had not told me. Thus, legislative history has produced what it usually produces: more questions rather than more answers.

in interbank controversies." *Ante*, at 273 (emphasis added). Quite so. The text's the thing. We should therefore ignore drafting history without discussing it, instead of after discussing it.

Syllabus

NEAL *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 94–9088. Argued December 4, 1995—Decided January 22, 1996

When the District Court first sentenced petitioner Neal on two plea-bargained convictions involving possession of LSD with intent to distribute, the amount of LSD sold by a drug trafficker was determined, under both the federal statute directing minimum sentences and the United States Sentencing Commission's Guidelines Manual, by the whole weight of the blotter paper or other carrier medium containing the drug. Because the combined weight of the blotter paper and LSD actually sold by Neal was 109.51 grams, the court ruled, among other things, that he was subject to 21 U. S. C. § 841(b)(1)(A)(v), which imposes a 10-year mandatory minimum sentence on anyone convicted of trafficking in more than 10 grams of "a mixture or substance containing a detectable amount" of LSD. After the Commission revised the Guidelines' calculation method by instructing courts to give each dose of LSD on a carrier medium a constructive or presumed weight, Neal filed a motion to modify his sentence, contending that the weight of the LSD attributable to him under the amended Guidelines was only 4.58 grams, well short of § 841(b)(1)(A)(v)'s 10-gram requirement, and that the Guidelines' presumptive-weight method controlled the mandatory minimum calculation. The District Court followed *Chapman* v. *United States*, 500 U. S. 453, 468, in holding, *inter alia*, that the actual weight of the blotter paper, with its absorbed LSD, was determinative of whether Neal crossed the 10-gram threshold and that the 10-year mandatory minimum sentence still applied to him notwithstanding the Guidelines. In affirming, the en banc Seventh Circuit agreed with the District Court that a dual system now prevails in calculating LSD weights in cases like this.

Held: Section 841(b)(1) directs a sentencing court to take into account the actual weight of the blotter paper with its absorbed LSD, even though the Sentencing Guidelines require a different method of calculating the weight of an LSD mixture or substance. The Court rejects petitioner's contentions that the revised Guidelines are entitled to deference as a construction of § 841(b)(1) and that those Guidelines require reconsideration of the method used to determine statutory minimum sentences. While the Commission's expertise and the Guidelines' design may be of potential weight and relevance in other contexts, the Commission's choice of an alternative methodology for weighing LSD does not alter

Chapman's interpretation of the statute. In any event, *stare decisis* requires that the Court adhere to *Chapman* in the absence of intervening statutory changes casting doubt on the case's interpretation. It is doubtful that the Commission intended the Guidelines to displace *Chapman*'s actual-weight method for statutory minimum sentences, since the Commission's authoritative Guidelines commentary indicates that the new method is not an interpretation of the statute, but an independent calculation, and suggests that the statute controls if it conflicts with the Guidelines. Moreover, the Commission's dose-based method cannot be squared with *Chapman*. In these circumstances, this Court need not decide what, if any, deference is owed the Commission in order to reject its contrary interpretation. Once the Court has determined a statute's meaning, it adheres to its ruling under *stare decisis* and assesses an agency's later interpretation of the statute against that settled law. It is the responsibility of Congress, not this Court, to change statutes that are thought to be unwise or unfair. Pp. 288–296.

46 F. 3d 1405, affirmed.

KENNEDY, J., delivered the opinion for a unanimous Court.

Donald Thomas Bergerson, by appointment of the Court, *post*, p. 963, argued the cause for petitioner. With him on the briefs was *Michael J. Costello*.

Paul R. Q. Wolfson argued the cause for the United States. With him on the brief were *Solicitor General Days*, *Acting Assistant Attorney General Keeney*, and *Deputy Solicitor General Dreeben*.*

JUSTICE KENNEDY delivered the opinion of the Court.

The policy of sentencing drug offenders based on the amount of drugs involved, straightforward enough in its simplest formulation, gives rise to complexities, requiring us again to address the methods for calculating the weight of LSD sold by a drug trafficker. We reject petitioner's contention that the revised system for determining LSD amounts under the United States Sentencing Guidelines requires reconsideration of the method used to determine

**Peter Goldberger* and *Barbara E. Bergman* filed a brief for the National Association of Criminal Defense Lawyers et al. as *amici curiae* urging reversal.

statutory minimum sentences, and we adhere to our former decision on the subject.

I

LSD (lysergic acid diethylamide) is such a powerful narcotic that the average dose contains only 0.05 milligrams of the pure drug. The per-dose amount is so minute that in most instances LSD is transferred to a carrier medium and sold at retail by the dose, not by weight. In the typical case, pure LSD is dissolved in alcohol or other solvent, and the resulting solution is applied to paper or gelatin. The solvent evaporates; the LSD remains. The dealer cuts the paper or gel into single-dose squares for sale on the street. Users ingest the LSD by swallowing or licking the squares or drinking a beverage into which the squares have been mixed.

In 1988, petitioner Meirl Neal was arrested for selling 11,456 doses of LSD on blotter paper. The combined weight of the LSD and the paper was 109.51 grams. Following a guilty plea in the United States District Court for the Central District of Illinois, petitioner was convicted of one count of possession of LSD with intent to distribute it, in violation of 21 U. S. C. § 841, and one count of conspiracy to possess LSD with intent to distribute it, in violation of 21 U. S. C. § 846. At the initial sentencing, the method for determining the weight of the illegal mixture or substance was the same under the Guidelines and the statute directing minimum sentences. The determinative amount was the whole weight of the blotter paper containing the drug. See United States Sentencing Commission, Guidelines Manual § 2D1.1, Drug Quantity Table, n. * (Nov. 1987) (1987 USSG). Because the total weight of the LSD and blotter paper exceeded 10 grams, the District Court found petitioner subject to the 10-year mandatory minimum sentence specified in 21 U. S. C. § 841(b)(1)(A)(v). Under the version of the Sentencing Guidelines then in effect, the indicated sentence was even greater than the statutory minimum: The quantity of the

drugs and petitioner's prior convictions resulted in a Guidelines sentencing range of 188 to 235 months' imprisonment, even after an adjustment for petitioner's acceptance of responsibility for the crime. The District Court imposed concurrent sentences of 192 months' imprisonment on each count, to be followed by five years of supervised release.

In November 1993, the United States Sentencing Commission revised the method of calculating the weight of LSD in the Sentencing Guidelines. United States Sentencing Commission, Guidelines Manual, App. C., Amdt. 488 (Nov. 1995) (1995 USSG). Departing from its former approach of weighing the entire mixture or substance containing LSD, the amended Guideline instructed courts to give each dose of LSD on a carrier medium a constructive or presumed weight of 0.4 milligrams. *Id.*, § 2D1.1(c), n. (H). The revised Guideline was retroactive, *id.*, App. C, Amdt. 502, and one month later petitioner filed a motion to modify his sentence, see 18 U. S. C. § 3582(c)(2). He contended that the weight of the LSD attributable to him under the amended Guidelines was 4.58 grams (11,456 doses × 0.4 milligrams). For that amount, the applicable sentencing range under the Guidelines would be 70 to 87 months of imprisonment. The 10-year statutory minimum of § 841(b)(1)(A)(v) was no bar to a reduced sentence, petitioner argued, because the presumptive-weight method of the Guidelines should also control the mandatory minimum calculation. The 4.58 grams attributable to him by the Guidelines method would be well short of the 10 grams necessitating a 10-year minimum sentence.

The District Court, following our recent decision in *Chapman* v. *United States*, 500 U. S. 453 (1991), ruled that the blotter paper must be weighed in determining whether petitioner crossed the 10-gram threshold of § 841(b)(1)(A)(v). It held that the mandatory minimum sentence of 10 years still applied to petitioner notwithstanding the sentencing range under the Guidelines. Since the Guidelines no longer au-

thorized a sentence above the statutory minimum, the District Court reduced petitioner's sentence to 120 months on each count.

On appeal, the Court of Appeals for the Seventh Circuit, sitting en banc, agreed with the District Court that a dual system now prevails in calculating LSD weights in cases like this, and it affirmed petitioner's sentence. 46 F. 3d 1405 (1995).

We granted certiorari to resolve a conflict in the Courts of Appeals over whether the revised Guideline governs the calculation of the weight of LSD for purposes of § 841(b)(1). 515 U. S. 1141 (1995). Compare *United States* v. *Muschik*, 49 F. 3d 512, 518 (CA9 1995) (Guideline method should be used under § 841(b)(1)), cert. pending, No. 95–156, with *United States* v. *Boot*, 25 F. 3d 52, 55 (CA1 1994); *United States* v. *Kinder*, 64 F. 3d 757, 759 (CA2 1995), cert. pending, No. 95–6746; *United States* v. *Hanlin*, 48 F. 3d 121, 124 (CA3 1995); *United States* v. *Pardue*, 36 F. 3d 429, 431 (CA5 1994), cert. denied, 514 U. S. 1113 (1995); *United States* v. *Andress*, 47 F. 3d 839, 840 (CA6 1995) *(per curiam)*; *United States* v. *Stoneking*, 60 F. 3d 399, 402 (CA8 1995) (en banc), cert. pending, No. 95–5410; *United States* v. *Mueller*, 27 F. 3d 494, 496–497 (CA10 1994); *United States* v. *Pope*, 58 F. 3d 1567, 1570 (CA11 1995).

II

Congress has tried different punishment schemes to combat the menace of drug trafficking. Under the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub. L. 91–513, 84 Stat. 1236, penalties depended upon whether or not a drug was classified as a narcotic. Chagrined by the resulting sentencing disparities, Congress amended the narcotics laws in 1984 to calculate penalties by the weight of the pure drug involved. See *Chapman*, 500 U. S., at 460–461. Focusing on the pure drug, however, often allowed retail traffickers, who supplied street markets with mixed or diluted drugs ready for consumption, to receive sentences

lighter than what Congress deemed necessary. *Id.*, at 461. In passing the Anti-Drug Abuse Act of 1986, Pub. L. 99–570, 100 Stat. 3207, "Congress adopted a 'market-oriented' approach to punishing drug trafficking, under which the total quantity of what is distributed, rather than the amount of pure drug involved, is used to determine the length of the sentence." *Chapman, supra*, at 461; H. R. Rep. No. 99–845, pt. 1, pp. 11–12, 17 (1986). The Act provided for mandatory minimum sentences based on the weight of "a mixture or substance containing a detectable amount" of various controlled substances, including LSD. 21 U. S. C. §§ 841(b)(1)(A)(i)–(viii) and (B)(i)–(viii). Trafficking in 10 grams or more of a mixture or substance containing LSD earns the offender at least 10 years in prison. § 841(b)(1)(A)(v).

In *Chapman*, we interpreted the provision of the Act that provided a mandatory minimum sentence of five years for trafficking in an LSD "mixture or substance" that weighed one gram or more, see § 841(b)(1)(B)(v). We construed "mixture" and "substance" to have their ordinary meaning, observing that the terms had not been defined in the statute or the Sentencing Guidelines and had no distinctive common-law meaning. 500 U. S., at 461–462. Reasoning that the "LSD is diffused among the fibers of the paper . . . [and] cannot be distinguished from the blotter paper, nor easily separated from it," *id.*, at 462, we held that the actual weight of the blotter paper, with its absorbed LSD, is determinative under the statute, *id.*, at 468.

Petitioner contends that the method approved in *Chapman* is no longer appropriate. In his view, the Commission intended its dose-based method to supplant the actual-weight method used in *Chapman*, and we should not presume that the Commission would recognize two inconsistent schemes for sentencing LSD traffickers, cf. 1995 USSG § 2D1.1, comment., backg'd (stating purposes of making offense levels in § 2D1.1 "proportional to the levels established

by statute" and providing "a logical sentencing structure for drug offenses"). Petitioner concedes, as he must, that the Commission does not have the authority to amend the statute we construed in *Chapman*. He argues, nonetheless, that the Commission is the agency charged with interpretation of penalty statutes and expert in sentencing matters, so its construction of § 841(b)(1) should be given deference. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). Congress intended the Commission's rulemaking to respond to judicial decisions in developing a coherent sentencing regime, see *Braxton* v. *United States*, 500 U. S. 344, 348 (1991), so, petitioner contends, deference is appropriate even though the Commission's interpretation postdated *Chapman*. In the alternative, he urges that we reassess *Chapman* in light of the Commission's revised method, which was formed from careful study of retail drug markets. Although *Chapman* established that the weight of the blotter paper must be taken into account, it did not address how courts should do so. The Commission has filled the gap, petitioner maintains, by assigning a constructive weight to the LSD and carrier for each dose.

While acknowledging that the Commission's expertise and the design of the Guidelines may be of potential weight and relevance in other contexts, we conclude that the Commission's choice of an alternative methodology for weighing LSD does not alter our interpretation of the statute in *Chapman*. In any event, principles of *stare decisis* require that we adhere to our earlier decision.

The Commission was born of congressional disenchantment with the vagaries of federal sentencing and of the parole system. *Mistretta* v. *United States*, 488 U. S. 361, 366 (1989) (discussing the Sentencing Reform Act of 1984 and its legislative history). The Commission is directed to "establish sentencing policies and practices for the Federal criminal justice system" that meet congressional goals set forth in 18

U. S. C. § 3553(a)(2) and that, within a regime of individualized sentencing, eliminate unwarranted disparities in punishment of similar defendants who commit similar crimes. See 28 U. S. C. §§ 991(b)(1)(A)–(B). Congress also charged the Commission with the duty to measure and monitor the effectiveness of various sentencing, penal, and correctional practices. § 991(b)(2). In fulfilling its mandate, the Commission has the authority to promulgate, review, and revise binding guidelines to "establish a range of determinate sentences for categories of offenses and defendants according to various specified factors, among others." *Mistretta, supra,* at 368 (internal quotation marks omitted); see 28 U. S. C. §§ 994(a), (b), (c), and (*o*).

Like 21 U. S. C. § 841(b)(1), the Sentencing Guidelines calibrate the punishment of drug traffickers according to the quantity of drugs involved in the offense. From their inception in 1987, the Guidelines have used a detailed Drug Quantity Table as a first step in determining the sentence. See 1995 USSG § 2D1.1(c); 1987 USSG § 2D1.1. The current Table has 17 tiers, each with specified weight ranges for different controlled substances. The weight ranges reflect the Commission's assessment of equivalent culpability among defendants who traffic in different types of drugs, and so all defendants in the same tier are assigned the same base offense level. See 1995 USSG § 2D1.1(c). Once the base offense level is adjusted for other factors, it yields a specific sentencing range depending on the defendant's criminal history. See 1995 USSG § 1B1.1.

Although the mandatory-minimum statute and the Guidelines both turn upon drug quantities, the Commission itself has noted that "mandatory minimums are both structurally and functionally at odds with sentencing guidelines and the goals the guidelines seek to achieve." United States Sentencing Commission, Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System 26 (Aug. 1991).

> "The sentencing guidelines system is essentially a system of finely calibrated sentences. For example, as the quantity of drugs increases, there is a proportional increase in the sentence. In marked contrast, the mandatory minimums are essentially a flat, tariff-like approach to sentencing. Whereas guidelines seek a smooth continuum, mandatory minimums result in 'cliffs.' The 'cliffs' that result from mandatory minimums compromise proportionality, a fundamental premise for just punishment, and a primary goal of the Sentencing Reform Act." *Id.*, at iii.

Despite incongruities between the Guidelines and the mandatory sentencing statute, the Commission has sought to make the Guidelines parallel to the scheme of § 841(b)(1) in most instances. See 1995 USSG § 2D1.1, comment., n. 10 ("The Commission has used the sentences provided in, and equivalences derived from, the statute (21 U. S. C. § 841(b)(1)), as the primary basis for the guideline sentences"). As a general rule, the Commission adopts the same approach to weighing drugs as the statute does: "Unless otherwise specified, the weight of a controlled substance set forth in the table refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance." 1995 USSG § 2D1.1(c), n. (A); see also 1995 USSG § 2D1.1, comment., n. 1 ("'Mixture or substance' as used in this guideline has the same meaning as in 21 U. S. C. § 841, except as expressly provided"); 1987 USSG § 2D1.1, n. * (weighing rule intended to be "[c]onsistent with the provisions of the Anti-Drug Abuse Act"). For most narcotics, there will be no inconsistency in the calculations of drug quantities.

After study of the LSD trade, however, the Commission in 1993 decided it could no longer follow that general rule for LSD offenses and fulfill the statutory directive to promote proportionate sentencing. The Commission determined that "[b]ecause the weights of LSD carrier media vary

widely and typically far exceed the weight of the controlled substance itself, . . . basing offense levels on the entire weight of the LSD and carrier medium would produce unwarranted disparity among offenses involving the same quantity of actual LSD (but different carrier weights), as well as sentences disproportionate to those for other, more dangerous controlled substances, such as PCP." 1995 USSG §2D1.1, comment., backg'd. To remedy the problem, the Commission revised its Guideline to provide:

> "In the case of LSD on a carrier medium (*e. g.*, a sheet of blotter paper), do not use the weight of the LSD/carrier medium. Instead, treat each dose of LSD on the carrier medium as equal to 0.4 mg of LSD for the purposes of the Drug Quantity Table." 1995 USSG §2D1.1(c), n. (H).

Under the amendment, a court determines the defendant's base offense level in the Drug Quantity Table by multiplying the number of doses of LSD involved by 0.4 milligrams. The Commission submitted the amendment to Congress, which did not disapprove it in the 180 days allotted by statute. See 28 U. S. C. §994(p). The amended Guideline took effect on November 1, 1993, and was in force when petitioner was resentenced.

As a threshold matter, it is doubtful that the Commission intended the constructive-weight method of the Guidelines to displace the actual-weight method that *Chapman* requires for statutory minimum sentences. The commentary, which is the authoritative construction of the Guidelines absent plain inconsistency or statutory or constitutional infirmity, *Stinson* v. *United States*, 508 U. S. 36, 38 (1993), states that the new method is to be used "for purposes of determining the base offense level." 1995 USSG §2D1.1, comment., backg'd. The next paragraph of the commentary repeats the point: The new method will make "the offense level for LSD on a carrier medium . . . [less than] that for the same

number of doses of PCP," "harmonize offense levels for LSD offenses with those for other controlled substances," and "avoid an undue influence of varied carrier weight on the applicable offense level." *Ibid.* This would be obscure language to choose if the Commission were attempting an interpretation of the statute as well as a revision of the Guidelines, for offense levels are not relevant to the mandatory-minimum calculation.

Furthermore, after a catalog of reasons for adopting the dose-based method, the Commission ends with the observation that "[n]onetheless, this approach does not override the applicability of 'mixture or substance' for the purpose of applying any mandatory minimum sentence (*see Chapman;* § 5G1.1(b))." *Ibid.* The citation of *Chapman* in tandem with § 5G1.1(b), which advises that "[w]here a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence," suggests that the Guidelines calculation is independent of the statutory calculation, and that the statute controls if they conflict. The Commission seems to do no more than acknowledge that, whether or not its method would be preferable for the statute and Guideline alike, it has no authority to override the statute as we have construed it.

Were we, for argument's sake, to adopt petitioner's view that the Commission intended the commentary as an interpretation of § 841(b)(1), and that the last sentence of the commentary states the Commission's view that the dose-based method is consistent with the term "mixture or substance" in the statute, he still would not prevail. The Commission's dose-based method cannot be squared with *Chapman.* The Guideline does take into account some of the weight of the carrier medium (because the average weight of an LSD dose is 0.05 milligrams, 0.35 of the Commission's constructive weight per dose of 0.4 milligrams is attributable to the medium, see 1995 USSG § 2D1.1, comment., backg'd), but we

held in *Chapman* that § 841(b)(1) requires "the entire mixture or substance . . . to be weighed when calculating the sentence." 500 U. S., at 459. In these circumstances, we need not decide what, if any, deference is owed the Commission in order to reject its alleged contrary interpretation. Once we have determined a statute's meaning, we adhere to our ruling under the doctrine of *stare decisis*, and we assess an agency's later interpretation of the statute against that settled law. *Lechmere, Inc.* v. *NLRB*, 502 U. S. 527, 536–537 (1992); *Maislin Industries, U. S., Inc.* v. *Primary Steel, Inc.*, 497 U. S. 116, 131 (1990).

Our reluctance to overturn precedents derives in part from institutional concerns about the relationship of the Judiciary to Congress. One reason that we give great weight to *stare decisis* in the area of statutory construction is that "Congress is free to change this Court's interpretation of its legislation." *Illinois Brick Co.* v. *Illinois*, 431 U. S. 720, 736 (1977). We have overruled our precedents when the intervening development of the law has "removed or weakened the conceptual underpinnings from the prior decision, or where the later law has rendered the decision irreconcilable with competing legal doctrines or policies." *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 173 (1989) (citations omitted). Absent those changes or compelling evidence bearing on Congress' original intent, *NLRB* v. *Longshoremen*, 473 U. S. 61, 84 (1985), our system demands that we adhere to our prior interpretations of statutes. Entrusted within its sphere to make policy judgments, the Commission may abandon its old methods in favor of what it has deemed a more desirable "approach" to calculating LSD quantities, cf. 1995 USSG § 2D1.1, comment., backg'd. We, however, do not have the same latitude to forsake prior interpretations of a statute. True, there may be little in logic to defend the statute's treatment of LSD; it results in significant disparity of punishment meted out to LSD offenders relative to other narcotics traffickers. (Although the number of doses peti-

tioner sold seems high, the quantities of other narcotics a defendant would have to sell to receive a comparable sentence under the statute yield far more doses, see *United States* v. *Marshall*, 908 F. 2d 1312, 1334 (CA7 1990) (Posner, J., dissenting), aff'd *sub nom. Chapman* v. *United States*, 500 U. S. 453 (1991).) Even so, Congress, not this Court, has the responsibility for revising its statutes. Were we to alter our statutory interpretations from case to case, Congress would have less reason to exercise its responsibility to correct statutes that are thought to be unwise or unfair.

Like *Chapman*, this case involves a petitioner who sold LSD on blotter paper, the "carrier of choice" involved in "the vast majority of cases." 500 U. S., at 466. Just as we declined in *Chapman* to entertain "hypothetical cases . . . involving very heavy carriers and very little LSD" in resolving a due process challenge, *ibid.*, we do not address how § 841(b)(1) should be applied in those cases.

We hold that § 841(b)(1) directs a sentencing court to take into account the actual weight of the blotter paper with its absorbed LSD, even though the Sentencing Guidelines require a different method of calculating the weight of an LSD mixture or substance. The judgment of the Court of Appeals is affirmed.

It is so ordered.

Per Curiam

ATTWOOD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 95–6710. Decided January 22, 1996

In November 1995, this Court twice invoked Rule 39.8 to deny petitioner Attwood *in forma pauperis* status. All seven petitions he had filed at that time and the two he has filed since were patently frivolous and were denied without recorded dissent.

Held: For the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, Attwood is denied leave to proceed *in forma pauperis* in the instant case, and the Clerk is directed not to accept any further petitions for certiorari from him in noncriminal matters unless he pays the required docketing fee and submits his petition in compliance with this Court's Rule 33. This order will not prevent Attwood from petitioning to challenge criminal sanctions which might be imposed against him, but it will allow this Court to devote its limited resources to the claims of petitioners who have not abused the certiorari process.

Motion denied.

PER CURIAM.

Pro se petitioner Robert Attwood requests leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request pursuant to Rule 39.8. Attwood is allowed until February 12, 1996, within which to pay the docketing fee required by Rule 38 and to submit his petition in compliance with this Court's Rule 33. We also direct the Clerk not to accept any further petitions for certiorari from Attwood in noncriminal matters unless he pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule 33.

Attwood has abused this Court's certiorari process. In November 1995, we twice invoked Rule 39.8 to deny Attwood *in forma pauperis* status. See *Attwood* v. *Smith* and *Attwood* v. *Palm Beach Post*, *post*, p. 963. At that time, Attwood had filed seven petitions in this Court during the prior

year, and he has filed two since. All were patently frivolous and were denied without recorded dissent.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992). Attwood's abuse of the writ of certiorari has been in noncriminal cases, and so we limit our sanction accordingly. The order will not prevent Attwood from petitioning to challenge criminal sanctions which might be imposed against him. The order will, however, allow this Court to devote its limited resources to the claims of petitioners who have not abused our certiorari process.

It is so ordered.

JUSTICE STEVENS, dissenting.

Because experience with the administration of orders like the one the Court is entering in this case today has merely reinforced my conviction that our "limited resources" would be used more effectively by simply denying petitions that are manifestly frivolous, I respectfully dissent. Perhaps one day reflection will persuade my colleagues to return to "the great tradition of open access that characterized the Court's history prior to its unprecedented decisions in *In re McDonald*, 489 U. S. 180 (1989) *(per curiam)*, and *In re Sindram*, 498 U. S. 177 (1991) *(per curiam)*." See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, 4 (1992) (STEVENS, J., dissenting).

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BEHRENS *v.* PELLETIER

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 94–1244. Argued November 7, 1995—Decided February 21, 1996

Respondent was fired as provisional managing officer of Pioneer Savings and Loan Association after petitioner, the federal official responsible for monitoring Pioneer's operations, recommended such action because respondent was under investigation for potential misconduct relating to the collapse of another financial institution. Respondent filed this suit, seeking, *inter alia*, damages for alleged constitutional wrongs under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388. In partially denying petitioner's motion to dismiss the *Bivens* claims, the District Court rejected petitioner's asserted defense of qualified immunity from suit. On appeal, the Ninth Circuit held that denial of qualified immunity is an immediately appealable "final" decision under 28 U. S. C. § 1291 and *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, but also stated, in dictum, that an official claiming qualified immunity is entitled to only one such pretrial appeal. Ultimately, the court affirmed the District Court's rejection of petitioner's qualified-immunity defense, based on the allegations made in respondent's complaint. On remand and after further proceedings, the District Court denied petitioner's motion for summary judgment, which again claimed qualified immunity. Petitioner's appeal from that denial, his second pretrial appeal based on a rejection of the qualified-immunity defense, was summarily dismissed by the Ninth Circuit "for lack of jurisdiction."

Held: A defendant's immediate appeal of an unfavorable qualified-immunity ruling on a motion to dismiss does not deprive the court of appeals of jurisdiction over a second appeal, also based on qualified immunity, immediately following denial of summary judgment. Pp. 305–314.

(a) The Ninth Circuit's one-interlocutory-appeal rule is rejected. In *Mitchell* v. *Forsyth*, 472 U. S. 511, 530, this Court held that a district court's denial of qualified immunity is an immediately appealable "final decision" within the meaning of 28 U. S. C. § 1291. *Mitchell* plainly contemplated that a government officer could raise the qualified-immunity defense at *both* the motion-to-dismiss *and* the summary-judgment stage, see 472 U. S., at 526, and clearly establishes that an order rejecting the defense at *either* stage is a "final" judgment subject to immediate appeal. An unsuccessful appeal from denial of a motion to dismiss cannot possibly render the later denial of a motion for summary judgment any

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less "final" than it would be absent the prior decision. It follows that petitioner's appeal seeks review of a "final decision" within § 1291 and that its dismissal by the Court of Appeals was improper. The Ninth Circuit's proposition that no more than one judiciously timed appeal should be necessary to safeguard a defendant's right to qualified immunity is unsound, because the factors determinative of the qualified-immunity question will be different on summary judgment, where the court looks to the uncontested evidence, than on an earlier motion to dismiss, where it merely looks to the allegations of the complaint. Pp. 305–311.

(b) Respondent's additional arguments as to why dismissal was proper—(1) that the order denying qualified immunity could not be said to be "final" under *Cohen* since, even if it were to be reversed, petitioner would nonetheless be required to endure discovery and trial on other matters, and (2) that, under *Johnson* v. *Jones*, 515 U. S. 304, the denial of summary judgment is not immediately appealable because it rests on the determination that a genuine dispute exists as to material issues of fact—are also rejected. Pp. 311–313.

Reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. BREYER, J., filed a dissenting opinion, in which STEVENS, J., joined, *post*, p. 314.

Lenard G. Weiss argued the cause for petitioner. With him on the briefs was *Christine A. Murphy.*

Cornelia T. L. Pillard argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Days, Assistant Attorney General Hunger, Deputy Solicitor General Bender, Barbara L. Herwig,* and *Richard A. Olderman.*

Samuel T. Rees, by appointment of the Court, 515 U. S. 1101, argued the cause for respondent. With him on the brief was *Michael J. White.**

**Louise H. Renne, Dennis Aftergut, G. Scott Emblidge, Ronald R. Ball, David J. Erwin, J. Kenneth Brown, Norman Herring, Edward J. Foley, Charles J. Williams, James K. Hahn, Katherine J. Hamilton, Gregory P. Priamos, Edward J. Cooper, Rene Auguste Chouteau, Mark G. Sellers, David B. Brearley,* and *Robert E. Murphy* filed a brief for the City and County of San Francisco as *amicus curiae* urging reversal.

JUSTICE SCALIA delivered the opinion of the Court.

In *Mitchell* v. *Forsyth*, 472 U. S. 511 (1985), we held that a district court's rejection of a defendant's qualified-immunity defense is a "final decision" subject to immediate appeal under the general appellate jurisdiction statute, 28 U. S. C. § 1291. The question presented in this case is whether a defendant's immediate appeal of an unfavorable qualified-immunity ruling on his motion to dismiss deprives the court of appeals of jurisdiction over a second appeal, also based on qualified immunity, immediately following denial of summary judgment.

I

In 1983, South Coast Savings and Loan Association, a new institution, applied to the Federal Home Loan Bank Board (FHLBB or Board) for the approval necessary to obtain account insurance from the Federal Savings and Loan Insurance Corporation (FSLIC).[1] Under FHLBB regulations, approval of new institutions was to be withheld if their "financial policies or management" were found to be "unsafe" for any of various reasons, including "character of the management." 12 CFR § 571.6(b) (1986). Accordingly, when FHLBB approved South Coast for FSLIC insurance in March 1984, it imposed a number of requirements, including the condition that South Coast "provide for employment of a qualified full-time executive managing officer, subject to approval by the Principal Supervisory Agent"—FHLBB's term for the president of the regional Home Loan Bank when operating in his oversight capacity on behalf of FHLBB. Record, Exh. B, Resolution No. 84–164, ¶ 10(p) (Mar. 29, 1984). The Board's resolution also required that, for a period of three years, any change in South Coast's chief management position be approved by FHLBB. *Ibid.*

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[1] FHLBB, FSLIC, and the regulatory scheme described in this opinion no longer exist, having been eliminated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 103 Stat. 183.

Shortly after obtaining FHLBB's conditional approval, South Coast was succeeded in interest by Pioneer Savings and Loan Association, another new institution. Pioneer named respondent Pelletier as its managing officer, subject to FHLBB consent, which Pioneer sought in mid-May 1985. Only a few weeks earlier, however, on April 23, 1985, FHLBB had declared insolvent Beverly Hills Savings and Loan Association, where respondent had at one time held a senior executive position. An inquiry by FSLIC pointed to potential misconduct by high-level management of the failed institution, which ultimately became the subject of an FSLIC lawsuit against several Beverly Hills officers, including respondent.

The FSLIC suit had not yet been filed at the time Pioneer sought the Board's consent to hire respondent; but FSLIC's pending investigation into Beverly Hills' collapse caused petitioner Behrens, the FHLBB "Supervisory Agent" then responsible for monitoring Pioneer's operations, to write Pioneer on May 8, 1986, withholding approval and advising that respondent be replaced. On receipt of the letter Pioneer asked respondent to resign and, when he refused, fired him.

Three years later, in 1989, respondent brought suit in federal court, naming petitioner as defendant in a complaint that included *Bivens* damages claims for two alleged constitutional wrongs. See *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971). Respondent charged, first, that petitioner's action in writing a letter that had effectively discharged him from his post at Pioneer, in summary fashion and without notice or opportunity to be heard, violated his right to procedural due process. Second, he claimed that he had been deprived of substantive due process by petitioner's alleged interference with his "clearly established and Constitutionally protected property and liberty rights . . . to specific employment and to pursue his profession free from undue governmental interference." First Amended Complaint ¶ 38, reprinted in App. 7, 16. The complaint alleged

that petitioner's letter, along with other, continuing efforts to harm respondent's reputation, had cost respondent not only his position at Pioneer, but also his livelihood within the savings and loan industry. The complaint also contained other claims—against petitioner and against the Federal Home Loan Bank of San Francisco (petitioner's immediate employer), FHLBB, and the United States; none of these is relevant to the present appeal.

Petitioner filed a motion to dismiss or, in the alternative, for summary judgment. With regard to the *Bivens* claims, he asserted a statute-of-limitations defense and claimed qualified immunity from suit on the ground that his actions, taken in a governmental capacity, "d[id] not violate clearly established statutory or constitutional rights." *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818 (1982). The District Court ruled in favor of petitioner on the statute-of-limitations ground and therefore dismissed the procedural due process *Bivens* claim, and the substantive due process *Bivens* claim to the extent it related to petitioner's letter and respondent's loss of employment at Pioneer. It refused, however, to dismiss respondent's suit "to the extent [it was] based on other alleged subsequent acts of defendan[t] preventing and continuing to prevent [respondent] from securing employment." *Pelletier* v. *Federal Home Loan Bank of San Francisco*, No. CV 89–969 (CD Cal., Oct. 5, 1989), reprinted in App. 27–28. The court also denied petitioner's summary judgment motion, without prejudice, on the ground that it was premature given the lack of discovery.

Petitioner immediately appealed the District Court's implicit denial of his qualified-immunity defense regarding the remaining *Bivens* claim. The Court of Appeals entertained the appeal, notwithstanding its interlocutory nature, holding that "a denial of qualified immunity is an appealable 'final' order under the test set forth in *Cohen* v. *Beneficial Indust. Loan Corp.*, 337 U. S. 541 (1949) . . . , regardless of whether that denial takes the form of a refusal to grant a defendant's

motion to dismiss or a denial of summary judgment." *Pelletier* v. *Federal Home Loan Bank of San Francisco*, 968 F. 2d 865, 870 (CA9 1992). It said in dictum, however, that a defendant claiming qualified immunity could not "take advantage of the several *opportunities* for immediate appeal afforded him by bringing repeated pretrial appeals," and that "[o]ne such interlocutory appeal is all that a government official is entitled to and all that we will entertain." *Id.*, at 870–871. On the merits of the appeal, the court rejected the argument that petitioner enjoyed qualified immunity because he had not violated any "clearly established right." It said that the question whether respondent had a constitutionally protected property interest in his Pioneer employment (subject, as it was, to regulatory approval) was not properly before the court, since the claims relating specifically to his discharge had been dismissed as time barred. *Id.*, at 871–872. (The Court of Appeals noted in dictum, however, *id.*, at 869, n. 6, that the District Court had applied an unduly short limitations period.) With respect to the claimed deprivation of post-Pioneer employment, the court held that the "nebulous theories of conspiracy" set out in respondent's complaint—although "insufficient to survive a motion for summary judgment"—made out a proper *Bivens* claim. 968 F. 2d, at 872–873.

Upon remand, the District Court reversed its earlier statute-of-limitations ruling in light of the Court of Appeals' dictum, and reinstated the claims relating to employment at Pioneer. After discovery, petitioner moved for summary judgment on qualified-immunity grounds, contending that his actions had not violated any "clearly established" right of respondent regarding his employment at Pioneer or elsewhere. The District Court denied the motion with the unadorned statement that "[m]aterial issues of fact remain as to defendant Behrens on the *Bivens* claim." *Pelletier* v. *Federal Home Loan Bank of San Francisco*, No. CV 89–0969 (CD Cal., Sept. 6, 1994), reprinted in App. to Pet. for Cert.

5a. Petitioner filed a notice of appeal, which, on respondent's motion, the District Court certified as frivolous. In an unpublished order, the Ninth Circuit dismissed the appeal "for lack of jurisdiction." *Pelletier* v. *Federal Home Loan Bank of San Francisco*, No. 94–56507 (CA9, Nov. 17, 1994), reprinted in App. to Pet. for Cert. 1a. We granted certiorari, 514 U. S. 1035 (1995).

II

Section 1291 of Title 28, U. S. C., gives courts of appeals jurisdiction over "all final decisions" of district courts, except those for which appeal is to be had to this Court. The requirement of finality precludes consideration of decisions that are subject to revision, and even of "fully consummated decisions [that] are but steps towards final judgment in which they will merge." *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, 546 (1949). It does not, however, bar review of all prejudgment orders. In *Cohen*, we described a "small class" of district court decisions that, though short of final judgment, are immediately appealable because they "finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Ibid.* See also *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.*, 506 U. S. 139, 142–145 (1993) (citing *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463, 468 (1978)). The issue in the present case is the extent to which orders denying governmental officers' assertions of qualified immunity come within the *Cohen* category of appealable decisions.

As set forth in *Harlow* v. *Fitzgerald*, 457 U. S. 800 (1982), the qualified-immunity defense "shield[s] [government agents] from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known," *id.*, at 818 (citing *Procunier* v. *Navarette*, 434 U. S.

555, 565 (1978)). *Harlow* adopted this criterion of "objective legal reasonableness," rather than good faith, precisely in order to "permit the defeat of insubstantial claims without resort to trial." 457 U. S., at 819, 813. Unsurprisingly, then, we later found the immunity to be "an entitlement not to stand trial or face the other burdens of litigation, conditioned on the resolution of the essentially legal [immunity] question." *Mitchell* v. *Forsyth*, 472 U. S., at 526. And, as with district-court rejection of claims to other such entitlements distinct from the merits, see, *e. g.*, *Puerto Rico Aqueduct*, *supra*, at 145–146 (Eleventh Amendment immunity); *Abney* v. *United States*, 431 U. S. 651, 662 (1977) (right not to be subjected to double jeopardy), we held that "a district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable 'final decision' within the meaning of 28 U. S. C. § 1291 notwithstanding the absence of a final judgment." *Mitchell*, *supra*, at 530. See also *Johnson* v. *Jones*, 515 U. S. 304, 311–312 (1995).

While *Mitchell* did not say that a defendant could appeal from denial of a qualified-immunity defense more than once,[2] it clearly contemplated that he could *raise* the defense at successive stages:

> "Unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery. Even if the plaintiff's complaint adequately alleges the commission of acts that violated clearly established law, the defendant is entitled to summary judgment if discovery fails to uncover evi-

[2] Interestingly, however, *Mitchell* itself dealt with the second of two interlocutory appeals on immunity claims. See 472 U. S., at 515–519. Neither the Court of Appeals nor this Court assigned any significance to the successive aspect of the second appeal.

> dence sufficient to create a genuine issue as to whether the defendant in fact committed those acts." 472 U. S., at 526 (citation omitted).

Thus, *Mitchell* clearly establishes that an order rejecting the defense of qualified immunity at *either* the dismissal stage *or* the summary judgment stage is a "final" judgment subject to immediate appeal. Since an unsuccessful appeal from a denial of dismissal cannot possibly render the later denial of a motion for summary judgment any *less* "final," it follows that petitioner's appeal falls within § 1291 and dismissal was improper.

Indeed, it is easier to argue that the denial of summary judgment—the order sought to be appealed here—is the *more* "final" of the two orders. That is the reasoning the First Circuit adopted in holding that denial of a motion to dismiss on absolute-immunity grounds was not "final" where the defendant had stated that, if unsuccessful, he would later seek summary judgment on qualified-immunity grounds: "Since the district court has not yet determined whether [the defendant] has qualified immunity, and that he will *have* to stand trial, its decision is not an appealable collateral order." *Kaiter* v. *Boxford*, 836 F. 2d 704, 707 (1988). The problem with this approach, however, is that it would logically bar *any* appeal at the motion-to-dismiss stage where there is a possibility of presenting an immunity defense on summary judgment; that possibility would cause the motion-to-dismiss decision to be not "final" as to the defendant's right not to stand trial. The First Circuit sought to avoid this difficulty by saying that the defendant could render the motion-to-dismiss denial final by waiving his right to appeal the summary judgment denial. See *id.*, at 708. But quite obviously, eliminating the ability to *appeal* the second order does not eliminate the possibility that the second order will vindicate the defendant's right not to stand trial, and therefore

does not eliminate the supposed reason for declaring the first order nonfinal.

The source of the First Circuit's confusion was its mistaken conception of the scope of protection afforded by qualified immunity. *Harlow* and *Mitchell* make clear that the defense is meant to give government officials a right, not merely to avoid "standing trial," but also to avoid the burdens of "such *pretrial* matters as discovery . . . , as '[i]nquiries of this kind can be peculiarly disruptive of effective government.'" *Mitchell, supra,* at 526 (emphasis added) (quoting from *Harlow, supra,* at 817). Whether or not a later summary judgment motion is granted, denial of a motion to dismiss is conclusive as to this right. We would have thought that these and other statements from *Mitchell* and *Harlow* had settled the point, questioned by JUSTICE BREYER, see *post,* at 317, that this right is important enough to support an immediate appeal. If it were not, however, the consequence would be, *not* that only one pretrial appeal could be had in a given case, as JUSTICE BREYER proposes, but rather, that there could be *no* immediate appeal from denial of a motion to dismiss but only from denial of summary judgment. That conclusion is foreclosed by *Mitchell,* which unmistakably envisioned immediate appeal of "[t]he denial of a defendant's motion for dismissal or summary judgment on the ground of qualified immunity." 472 U. S., at 527.

The Court of Appeals in the present case, in the first of its two decisions, rested its "one-appeal" pronouncement upon the proposition that resolving the question of entitlement to qualified immunity "should not require more than one judiciously timed appeal." *Pelletier,* 968 F. 2d, at 871. It did not explain how this proposition pertains to the question of finality, but we suppose it could be argued that a category of appeals thought to be needless or superfluous does not raise a claim of right "too important to be denied review," as our *Cohen* finality jurisprudence requires, see 337 U. S., at 546.

In any event, the proposition is not sound. That one appeal on the immunity issue may not be enough is illustrated by the history of respondent's claims for loss of employment at Pioneer in the present case. Because these claims had initially been dismissed as time barred, the Court of Appeals refused to decide (and thus evidently regarded as an open question) whether one who holds his job subject to regulatory approval can assert a constitutionally cognizable expectation of continued employment. See *Pelletier, supra,* at 871–872. Thus, the question whether petitioner was entitled to immunity on these claims was not presented to *any* court until petitioner's summary judgment motion—and, by operation of the Ninth Circuit's one-appeal rule, has never been addressed by an appellate court.

That is assuredly an unusual set of circumstances, but even in a case proceeding in a more normal fashion resolution of the immunity question may "require more than one judiciously timed appeal," because the legally relevant factors bearing upon the *Harlow* question will be different on summary judgment than on an earlier motion to dismiss. At that earlier stage, it is the defendant's conduct *as alleged in the complaint* that is scrutinized for "objective legal reasonableness." On summary judgment, however, the plaintiff can no longer rest on the pleadings, see Fed. Rule Civ. Proc. 56, and the court looks to the evidence before it (in the light most favorable to the plaintiff) when conducting the *Harlow* inquiry. It is no more true that the defendant who has unsuccessfully appealed denial of a motion to dismiss has no need to appeal denial of a motion for summary judgment, than it is that the defendant who has unsuccessfully *made* a motion to dismiss has no need to *make* a motion for summary judgment.[3]

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[3] JUSTICE BREYER suggests that the second of two pretrial qualified-immunity appeals does not come within *Cohen*'s class of immediately ap-

The Court of Appeals expressed concern that a second appeal would tend to have the illegitimate purpose of delaying the proceedings. See 968 F. 2d, at 870–871. Undeniably, the availability of a second appeal affords an opportunity for abuse, but we have no reason to believe that abuse has often occurred. To the contrary, successive pretrial assertions of immunity seem to be a rare occurrence.[4] Moreover, if and when abuse does occur, as we observed in the analogous context of interlocutory appeals on the issue of double jeopardy, "[i]t is well within the supervisory powers of the courts of appeals to establish summary procedures and calendars to weed out frivolous claims." *Abney*, 431 U. S., at 662, n. 8. In the present case, for example, the District Court appropriately certified petitioner's immunity appeal as "frivolous" in light of the Court of Appeals' (unfortunately erroneous) one-appeal precedent. This practice, which has been embraced by several Circuits, enables the district court to re-

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pealable final orders because it is insufficiently "separable" from the claim raised on the first appeal, see *post*, at 316. But the *Cohen* "separability" component asks whether the question to be resolved on appeal is "conceptually distinct from the merits of the plaintiff's claim." *Mitchell* v. *Forsyth*, 472 U. S. 511, 527 (1985). The appropriate comparison, then, is between the decision sought to be reviewed and the claim underlying the action itself—not between the decision and any previous appeal, as JUSTICE BREYER suggests. And again, *Mitchell* clearly states that a denial of qualified immunity, whether on a motion for dismissal or summary judgment, is an "appealable 'final decision.'" *Id.*, at 530.

[4] We are aware of only five reported cases—*Mitchell* itself, *Nelson* v. *Silverman*, 999 F. 2d 417 (CA9 1993), *Abel* v. *Miller*, 904 F. 2d 394 (CA7 1990), *Francis* v. *Coughlin*, 891 F. 2d 43 (CA2 1989), and the present case—in which Courts of Appeals have been twice asked to review successive pretrial assertions of immunity. See *Abel*, *supra*, at 396 ("Paucity of precedent [on successive interlocutory appeals] must reflect the forbearance of public officials rather than lack of opportunity"); *Kaiter* v. *Boxford*, 836 F. 2d 704, 706 (CA1 1988) ("[I]n every case we have found which permitted interlocutory review of an immunity ruling, the defendant's entire claim to immunity was raised in a single proceeding").

tain jurisdiction pending summary disposition of the appeal, and thereby minimizes disruption of the ongoing proceedings. See, *e. g.*, *Chuman* v. *Wright*, 960 F. 2d 104, 105 (CA9 1992); *Yates* v. *Cleveland*, 941 F. 2d 444, 448–449 (CA6 1991); *Stewart* v. *Donges*, 915 F. 2d 572, 576–577 (CA10 1990); *Apostol* v. *Gallion*, 870 F. 2d 1335, 1339 (CA7 1989). In any event, the question before us here—whether there is jurisdiction over the appeal, as opposed to whether the appeal is frivolous—must be determined by focusing upon the category of order appealed from, rather than upon the strength of the grounds for reversing the order. "Appeal rights cannot depend on the facts of a particular case." *Carroll* v. *United States*, 354 U. S. 394, 405 (1957). See also *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S. 863, 868 (1994). As we have said, an order denying qualified immunity, to the extent it turns on an "issue of law," *Mitchell*, 472 U. S., at 530, is immediately appealable.

III

Our rejection of the one-interlocutory-appeal rule does not dispose of this case. Respondent proposes two other reasons why appeal of denial of the summary judgment motion is not available. First, he argues that no appeal is available where, even if the District Court's qualified-immunity ruling is reversed, the defendant will be required to endure discovery and trial on matters separate from the claims against which immunity was asserted. Respondent reasons that a ruling which does not reach all the claims does not "conclusively determin[e] the defendant's claim of right not to *stand trial*," *id.*, at 527, and thus the order denying immunity cannot be said to be "final" within the meaning of *Cohen*.

It is far from clear that, given the procedural posture of the present case, respondent would be entitled to the benefit of the proposition for which he argues; but we will address the proposition on its merits. The Courts of Appeals have

almost unanimously rejected it,[5] and so do we. The *Harlow* right to immunity is a right to immunity *from certain claims*, not from litigation in general; when immunity with respect to those claims has been finally denied, appeal must be available, and cannot be foreclosed by the mere addition of other claims to the suit. Making appealability depend upon such a factor, particular to the case at hand, would violate the principle discussed above, that appealability determinations are made for classes of decisions, not individual orders in specific cases. Apart from these objections in principle, the practical effect of respondent's proposal would be intolerable. If the district court rules erroneously, the qualified-immunity right not to be subjected to pretrial proceedings will be eliminated, so long as the plaintiff has alleged (with or without evidence to back it up) violation of one "clearly established" right; and both that and the further right not to be subjected to trial itself will be eliminated, so long as the complaint seeks injunctive relief (for which no "clearly established" right need be alleged).

Second, respondent asserts that appeal of denial of the summary judgment motion is not available because the denial rested on the ground that "[m]aterial issues of fact remain." This, he contends, renders the denial unappealable under last Term's decision in *Johnson* v. *Jones*, 515 U. S., at 313–318. That is a misreading of the case. Denial of summary judgment often includes a determination that there are controverted issues of material fact, see Fed. Rule Civ. Proc.

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[5] See, *e. g.*, *McLaurin* v. *Morton*, 48 F. 3d 944, 949 (CA6 1995); *Green* v. *Brantley*, 941 F. 2d 1146, 1148–1151 (CA11 1991) (en banc); *Di Martini* v. Ferrin, 889 F. 2d 922, 924–925 (CA9 1989), cert. denied, 501 U. S. 1204 (1991); *Young* v. *Lynch*, 846 F. 2d 960, 961–963 (CA4 1988); *DeVargas* v. *Mason & Hanger Silas Mason Co.*, 844 F. 2d 714, 717–718 (CA10 1988); *Musso* v. *Hourigan*, 836 F. 2d 736, 742, n. 1 (CA2 1988); *Scott* v. *Lacy*, 811 F. 2d 1153, 1153–1154 (CA7 1987); *De Abadia* v. *Izquierdo Mora*, 792 F. 2d 1187, 1188–1190 (CA1 1986); *Tubbesing* v. *Arnold*, 742 F. 2d 401, 403–404 (CA8 1984). Only the Third Circuit holds otherwise. See *Prisco* v. *United States Dept. of Justice*, 851 F. 2d 93, 95–96, cert. denied, 490 U. S. 1089 (1989).

56, and *Johnson* surely does not mean that *every* such denial of summary judgment is nonappealable. *Johnson* held, simply, that determinations of evidentiary sufficiency at summary judgment are not immediately appealable merely because they happen to arise in a qualified-immunity case; if what is at issue in the sufficiency determination is nothing more than whether the evidence could support a finding that particular conduct occurred, the question decided is not truly "separable" from the plaintiff's claim, and hence there is no "final decision" under *Cohen* and *Mitchell*. See 515 U. S., at 313–318. *Johnson* reaffirmed that summary judgment determinations *are* appealable when they resolve a dispute concerning an "abstract issu[e] of law" relating to qualified immunity, *id.*, at 317—typically, the issue whether the federal right allegedly infringed was "clearly established," see, *e. g.*, *Mitchell*, *supra*, at 530–535; *Davis* v. *Scherer*, 468 U. S. 183, 190–193 (1984).

Here the District Court's denial of petitioner's summary judgment motion necessarily determined that certain conduct attributed to petitioner (which was controverted) constituted a violation of clearly established law. *Johnson* permits petitioner to claim on appeal that all of the conduct which the District Court deemed sufficiently supported for purposes of summary judgment met the *Harlow* standard of "objective legal reasonableness." This argument was presented by petitioner in the trial court, and there is no apparent impediment to its being raised on appeal. And while the District Court, in denying petitioner's summary judgment motion, did not identify the particular charged conduct that it deemed adequately supported, *Johnson* recognizes that under such circumstances "a court of appeals may have to undertake a cumbersome review of the record to determine what facts the district court, in the light most favorable to the nonmoving party, likely assumed." *Johnson*, *supra*, at 319. That is the task now facing the Court of Appeals in this case.

The judgment of the Court of Appeals is reversed, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

JUSTICE BREYER, with whom JUSTICE STEVENS joins, dissenting.

I do not agree with the Court's holding that those asserting a defense of qualified immunity are entitled, as a matter of course, to more than one interlocutory appeal. Rather, in my view, the law normally permits a single interlocutory appeal, and not more than one such appeal, from denials of a defendant's pretrial motions to dismiss a case on grounds of qualified immunity. The "collateral order" doctrine's basic rationale, this Court's precedents, and several practical considerations lead to this conclusion.

I

This Court's basic rationale for permitting an interlocutory appeal of a "collateral order" recognizes that interlocutory appeals are the exception, not the rule. Congress, with statutory exceptions not directly relevant here, has authorized appeals from "final" orders. 28 U. S. C. § 1291. In that way,

> "Congress . . . , by forbidding piecemeal disposition on appeal of what for practical purposes is a single controversy, set itself against enfeebling judicial administration [and] . . . the obstruction to just claims that would come from permitting the harassment and cost of a succession of separate appeals from the various rulings to which a litigation may give rise, from its initiation to entry of judgment." *Cobbledick* v. *United States*, 309 U. S. 323, 325 (1940).

Judges have nonetheless created what is, in effect, a nonstatutory exception, authorizing a special set of interlocutory

appeals, where a trial court's interlocutory order is a "collateral order" that satisfies the statutory term "final" for purposes of § 1291. See *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, 545–547 (1949). The trial court's interlocutory order is "collateral" (and "final"), however, only where it meets certain requirements. It must (1) "conclusively determine [a] disputed question," (2) "resolve an important issue completely separate from the merits of the action," and (3) "be effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand* v. *Livesay*, 437 U. S. 463, 468 (1978).

These requirements explain *why* the courts have created the "collateral order" exception. The "effective unreviewability" requirement means that failure to review the order on appeal *now* may cause a litigant permanent harm. The "conclusive determination" requirement means that appellate review *now* is likely needed to avoid that harm. The "separability" requirement means that review *now* will not likely force an appellate court to consider the same (or quite similar) questions more than once. *Johnson* v. *Jones*, 515 U. S. 304, 311 (1995). Taken together, these requirements, as set forth in the Court's cases, see, *e. g.*, *ibid.*; *Midland Asphalt Corp.* v. *United States*, 489 U. S. 794, 799 (1989); *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U. S. 271, 276 (1988), help pick out a class of orders where the error-correcting benefits of immediate appeal likely outweigh the costs, delays, diminished litigation coherence, and waste of appellate court time potentially associated with multiple appeals. See, *e. g.*, *Johnson*, *supra*, at 309–311; R. Posner, Economic Analysis of Law 585–587 (4th ed. 1992).

In *Mitchell* v. *Forsyth*, 472 U. S. 511 (1985), the Court applied this rationale to a District Court order denying a claim of qualified immunity. The Court concluded that the District Court order, by sending the case to trial, could cause the litigant what (in terms of the immunity doctrine's basic trial-avoiding purpose) would amount to an important harm.

See *id.*, at 526–527. Post-trial appellate review would come too late to avoid that harm. *Ibid.* And, the legal issue (where *purely* legal, see *Johnson*, *supra*, at 313–318) would often prove "separate" enough from the more basic substantive issues in the case to avoid significant duplication of appellate court time and effort. See 472 U. S., at 527–529; but see *id.*, at 545–550 (Brennan, J., dissenting). Hence, the "collateral order" doctrine's basic rationale supported interlocutory appeal.

That same rationale, however, does not support *two* pretrial interlocutory appeals, the first from a denial of a motion to dismiss a complaint, the second from a later, postappeal, denial of a motion for summary judgment. Consider the "separability" requirement. Both orders satisfy the literal terms of that requirement because the qualified immunity issues they resolve are both "separate," in equal measure, from the merits of the plaintiff's claim. See *ante*, at 309–310, n. 3. But the reasoned principles and purposes underlying the "separability" requirement are not served by a rule that permits both orders to be appealed because the issues they raise are not normally "separate" one from the other. Rather, they will often involve quite similar issues, likely presented to different appellate court panels, thereby risking the very duplication and waste of appellate resources that the courts intended the "separability" requirement to avoid. See 15A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3911, pp. 333–334 (2d ed. 1992) (hereinafter Wright & Miller).

Similarly, given the law's promise of *one* pretrial interlocutory appeal, a litigant's need for a second is much less pressing. The single interlocutory appeal can avoid much of, though not all of, the harm that *Mitchell* found. And, the remaining harm, as I shall next discuss, is not of a kind that the law considers *important* enough to justify an interlocutory appeal.

II

This Court's precedents justify one interlocutory appeal, but not more, in the ordinary qualified immunity case. When it initially set forth the "collateral order" exception, the Court said that it applied to "that small class" of orders that determine claims of right "too *important* to be denied [immediate] review." *Cohen, supra,* at 546 (emphasis added). In subsequent cases, and again today, the Court has reiterated that, to qualify for interlocutory appeal, the interest being asserted must be an *important* one. See, *e. g., ante,* at 308; *Digital Equipment Corp.* v. *Desktop Direct, Inc.,* 511 U. S. 863, 878–879 (1994) (*Cohen* inquiry "simply cannot be answered without a judgment about the value of the interests that would be lost through rigorous application of a final judgment requirement"); *Coopers & Lybrand, supra,* at 468 (disputed question must "resolve an important issue"); *Richardson-Merrell Inc.* v. *Koller,* 472 U. S. 424, 436 (1985); see also *Lauro Lines s.r.l.* v. *Chasser,* 490 U. S. 495, 502 (1989) (SCALIA, J., concurring) ("The importance of the right asserted has always been a significant part of our collateral order doctrine"). Because one pretrial appeal would normally prove sufficient to protect a government defendant's qualified immunity interest in not standing trial, the right to take multiple interlocutory appeals will normally protect only the defendant's additional interest in avoiding such *pre*trial burdens as discovery. Thus, the question, as JUSTICE SCALIA has pointed out, is whether this antidiscovery interest is "*sufficiently* important to overcome the policies militating against interlocutory appeals." *Id.,* at 503 (emphasis added). The relevant precedent indicates that, in the context of qualified immunity, it is not.

For one thing, the Court, when considering the kinds of orders that warrant interlocutory appeal, has identified as "sufficiently important" interests that are considerably more important than the ordinary interest in avoiding discovery.

See, *e. g.*, *Stack* v. *Boyle*, 342 U. S. 1 (1951) (interest in avoiding imprisonment; Excessive Bail Clause, U. S. Const., Amdt. 8); *Abney* v. *United States*, 431 U. S. 651 (1977) (interest in avoiding trial; Double Jeopardy Clause, U. S. Const., Amdt. 5); *Helstoski* v. *Meanor*, 442 U. S. 500 (1979) (interest in avoiding trial; Speech or Debate Clause, U. S. Const., Art. I, § 6); *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.*, 506 U. S. 139 (1993) (interest in avoiding trial; Eleventh Amendment immunity, U. S. Const., Amdt. 11).

For another thing, the Court has often said that the trouble, expense, and possible embarrassment associated with unnecessary litigation (interests rather like the qualified immunity antidiscovery interest) do not justify interlocutory appeal. See, *e. g.*, *Digital Equipment Corp.*, *supra*, at 881–882 (no interlocutory review of orders refusing to enforce a settlement agreement); *Lauro Lines*, *supra*, at 499 (no interlocutory review of orders refusing to enforce a forum selection clause); *Van Cauwenberghe* v. *Biard*, 486 U. S. 517, 524 (1988) (no interlocutory review of orders refusing to dismiss a civil suit on grounds of immunity from civil process or *forum non conveniens*).

Further, until now litigants have not been able routinely to vindicate, through immediate appeal, a legal right to avoid discovery, 15B Wright & Miller § 3914.23, at 123–130, even where the Constitution provides that antidiscovery right, see, *e. g.*, *Maness* v. *Meyers*, 419 U. S. 449, 458–461 (1975) (no interlocutory appeal of order refusing to quash subpoena for materials that arguably violated subpoenaed party's Fifth Amendment privilege against self-incrimination). Although a litigant can sometimes appeal an adverse discovery ruling, to do so, the litigant typically must disobey the discovery order and then appeal a resulting citation for contempt of court. *Church of Scientology of Cal.* v. *United States*, 506 U. S. 9, 18, n. 11 (1992); *Maness*, *supra*, at 460–461; *United*

States v. *Ryan*, 402 U. S. 530, 532–533 (1971); *Cobbledick* v. *United States*, 309 U. S., at 326–330; 15B Wright & Miller § 3914.23, at 140–155. But see *United States* v. *Nixon*, 418 U. S. 683, 691 (1974) (allowing President Nixon to appeal from a discovery order without first incurring a contempt citation, because "traditional contempt avenue to immediate appeal" would be "peculiarly inappropriate"). This "disobedience and contempt" requirement (somewhat analogous to a one-appeal limitation here) works, in part, because it "encourages reconsideration both by the party resisting discovery and by the party seeking discovery, and in part because it tends to limit appeals to issues that are both important and reasonably likely to lead to reversal." 15B Wright & Miller § 3914.23, at 154; see also *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 50, n. 8 (1987) (disobedience and contempt procedure "rests on an implicit assumption that unless a party resisting discovery is willing to risk being held in contempt, the significance of his claim is insufficient to justify interrupting the ongoing proceedings").

It seems highly anomalous for the law to deny a routine interlocutory appeal where the Constitution of the United States protects an antidiscovery interest, but to permit a routine appeal where the legal doctrine of qualified immunity protects a similar interest. Yet, today's holding will either create just such an anomaly, or, as is more likely, it will generate many new interlocutory appeals as lower courts apply its principle wherever the Constitution, or other important legal doctrine, offers a litigant special antidiscovery protection.

The majority suggests that the importance of the antidiscovery interest protected by qualified immunity has already been "settled" by such precedents as *Mitchell* v. *Forsyth*, 472 U. S. 511 (1985), and *Harlow* v. *Fitzgerald*, 457 U. S. 800 (1982). See *ante*, at 308. These cases do say that the qualified immunity defense, in its modern formulation,

was meant, in part, "to protect public officials from the 'broad-ranging discovery' that can be 'peculiarly disruptive of effective government.'" *Anderson* v. *Creighton*, 483 U. S. 635, 646, n. 6 (1987) (quoting *Harlow*, *supra*, at 817). But the Court's decision in *Mitchell* (that district court orders denying qualified immunity are immediately appealable) was concerned primarily with preserving defendants' immunity from *trial*, not discovery. See 472 U. S., at 525 ("At the heart of the issue before us is the question whether qualified immunity . . . is in fact an entitlement not to stand trial"); see also *Van Cauwenberghe*, *supra*, at 524 ("The critical question, following *Mitchell*, is whether 'the essence' of the claimed right is a right not to stand trial"). The Court has never before suggested, much less "settled," that the government defendant's antidiscovery interest—independent of his interest in avoiding trial—is so important that it must be safeguarded by interlocutory appellate review.

Finally, this Court and its individual Members have, in recent years, cautioned against expanding the class of orders eligible for interlocutory appeal. See, *e. g.*, *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U. S., at 868 (opinion of SOUTER, J.) ("[T]he 'narrow' exception should stay that way and never be allowed to swallow the general rule"); *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U. S., at 292 (SCALIA, J., concurring) ("[The Court's] finality jurisprudence is sorely in need of further limiting principles, so that *Cohen* appeals will be, as we originally announced they would be, a 'small class [of decisions] . . . too important to be denied review'"); *Richardson-Merrell Inc.* v. *Koller*, 472 U. S., at 440 (opinion of O'CONNOR, J.) ("[W]e decline to 'transform the limited exception carved out in *Cohen* into a license for broad disregard of the finality rule imposed by Congress in § 1291'") (quoting *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U. S. 368, 378 (1981)). Caution would seem especially appropriate where the Court is considering not one interlocutory appeal in a single case, but two.

III

Several important practical considerations also favor limiting the number of interlocutory qualified immunity appeals to one. The majority finds the necessary special harm in the fact that the qualified immunity doctrine protects public officials against discovery as well as trial; and it finds "separability" in the fact that a postdiscovery summary judgment motion likely asks a legal question that is conceptually distinct from the legal question posed by a prediscovery motion to dismiss a complaint. But, given this rationale, can one limit the number of appeals to just one or two? Would it not, in principle, justify several appeals where discovery, proceeding in stages, continuously turns up new facts, or where, after the close of the plaintiff's case, an immediate appeal would avoid the litigation burden of presenting an entire defense case.

Still, even two pretrial appeals risk what Justice Story called "very great delays, and oppressive expenses," *Canter* v. *American Ins. Co.*, 3 Pet. 307, 318 (1830), which can "ossify civil rights litigation," *Abel* v. *Miller*, 904 F. 2d 394, 396 (CA7 1990) (Easterbrook, J.). The defendant in the present case, for example, so far has spent more than four years (of seven since the complaint's filing) fighting, through interlocutory appeal, a case that he might well have won more quickly and easily either in the trial court or on appeal from an initially adverse judgment on the merits. Cf. *Pelletier* v. *Federal Home Loan Bank of San Francisco*, 968 F. 2d 865, 872–873 (CA9 1992) (expressing doubt that plaintiff's complaint could survive a summary judgment motion). I concede that every added interlocutory appeal will serve the interests that underlie qualified immunity to some extent, for each will help a government defendant terminate meritless litigation. But each added appeal likely would serve those interests to an ever-diminishing degree while posing an ever-increasing threat to the appearance of evenhanded justice in civil rights cases. See *Coopers & Lybrand* v. *Livesay*, 437 U. S., at 476

(no immediate appeal of prejudgment order denying class certification, in part because such appeals would "operat[e] only in favor of plaintiffs").

Further, as mentioned above, the majority's rationale threatens added appeals, not simply in qualified immunity cases, but wherever an immunity-type doctrine (or any other important legal rule) seeks to protect litigants from trial. See, *e. g.*, *Puerto Rico Aqueduct and Sewer Authority* v. *Metcalf & Eddy, Inc.*, 506 U. S. 139 (1993) (Eleventh Amendment immunity); *Nixon* v. *Fitzgerald*, 457 U. S. 731 (1982) (absolute immunity); *Abney* v. *United States*, 431 U. S. 651 (1977) (double jeopardy guarantee against successive prosecutions). It thereby threatens busy appellate courts with added numbers of essentially similar, if not repetitive, appeals, at a time when overloaded dockets threaten the federal appellate system. See Remarks of Chief Justice William H. Rehnquist, Tenth Annual Judicial Conference of the United States Court of Appeals for the Federal Circuit, 146 F. R. D. 256, 257 (Apr. 30, 1992) ("One of the chief needs of our generation is to deal with the current appellate capacity crisis in the Federal Courts of Appeals. Few could argue about the existence of such a crisis, born of spiraling federal filings and an increased tendency to appeal District Court decisions"); Judicial Conference of the United States, Long Range Plan for the Federal Courts 132 (Dec. 1995) ("[I]f conditions seriously deteriorate in the courts of appeals, it may be necessary to consider some limitations on the right to appeal"). See generally T. Baker, Rationing Justice on Appeal: The Problems of the U. S. Courts of Appeals 31–51 (1994).

Finally, as a practical matter, where the benefits of immediate appellate review predominate in an individual case, a party still can seek court leave to appeal immediately under 28 U. S. C. § 1292(b) (permitting immediate review of nonfinal orders that involve a controlling and controversial question of law, the appellate resolution of which "may materially

advance the ultimate termination of the litigation"). This Court has frequently observed that the availability of § 1292(b) review counsels against expanding other judicial exceptions to the rule against piecemeal appeals. See, *e. g.*, *Swint* v. *Chambers County Comm'n*, 514 U. S. 35, 45–47 (1995); *Digital Equipment Corp.*, 511 U. S., at 883; *Van Cauwenberghe* v. *Biard*, 486 U. S., at 529–530; *Richardson-Merrell Inc.*, 472 U. S., at 435; *Firestone Tire & Rubber Co.*, 449 U. S., at 378, n. 13; *Coopers & Lybrand*, *supra*, at 474–475, and n. 27; see also *Parkinson* v. *April Industries, Inc.*, 520 F. 2d 650, 658–660 (CA2 1975) (Friendly, J., concurring). We should be especially reluctant to identify new categories of "collateral orders" now that Congress has, by adding 28 U. S. C. § 2072(c) to the Rules Enabling Act, "designat[ed] . . . the rulemaking process as the way to define or refine when a district court ruling is 'final' and when an interlocutory order is appealable." *Swint*, *supra*, at 48.

IV

In sum, purpose, precedent, and practicality all argue for one interlocutory qualified immunity appeal per case and no more. I believe that the Court, following *Mitchell*, should simply hold that qualified immunity interests, while important enough to justify one interlocutory appeal, are not important enough to justify two. It is not necessary to argue about whether the defendant "waived" a second appeal, see *Kaiter* v. *Boxford*, 836 F. 2d 704, 708 (CA1 1988); nor, since the matter turns on "importance," not conclusiveness, need the Court decide just how the timing of an interlocutory appeal affects the "finality" of the trial court's denial of a motion to dismiss the complaint. See *ante*, at 307–308. Rather, a defendant asserting qualified immunity would remain free, as at present, to appeal from a denial of a motion to dismiss the complaint, or the defendant could wait, move for summary judgment, and appeal the motion's denial, but he could not do both—either because the interest asserted

in a *first* pretrial appeal is insufficiently important if the possibility remains of a *second* pretrial appeal, or because the interest asserted in a *second* pretrial appeal is insufficiently important if there has already been a *first* pretrial appeal.

As I said, precedent permits this result because, under that precedent, the *importance* of the interest (an interlocutory appeal is needed to protect) is one necessary requirement for application of the technical legal labels "final" or "collateral order." More importantly, meaning in law depends upon an understanding of purpose. Law's words, however technical they may sound, are not magic formulas; they must be read in light of their purposes, if we are to avoid essentially arbitrary applications and harmful results. For the reasons I have set forth, precedent, read in this way, does more than permit—it requires—a single interlocutory appeal. I therefore dissent.

Syllabus

FULTON CORP. *v.* FAULKNER, SECRETARY OF REVENUE OF NORTH CAROLINA

CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

No. 94–1239. Argued October 31, 1995—Decided February 21, 1996

During the period in question here, North Carolina levied an "intangibles tax" on a fraction of the value of corporate stock owned by state residents inversely proportional to the corporation's exposure to the State's income tax. Petitioner Fulton Corporation, a North Carolina company, filed a state-court action against respondent State Secretary of Revenue, seeking a declaratory judgment that this tax violated the Commerce Clause and a refund of the 1990 tax it had paid on stock it owned in out-of-state corporations that did only part or none of their business in the State. The trial court ruled for the Secretary, but the Court of Appeals reversed. In reversing the Court of Appeals, the North Carolina Supreme Court found that the State's scheme imposed a valid compensatory tax under *Darnell* v. *Indiana*, 226 U. S. 390. It thus rejected Fulton's contention that *Darnell* had been overruled by this Court's more recent decisions and found that the intangibles tax imposed less of a burden on interstate commerce than the corporate income tax placed on intrastate commerce.

Held: North Carolina's intangibles tax discriminates against interstate commerce in violation of the dormant Commerce Clause. Pp. 330–347.

(a) State laws discriminating against interstate commerce on their face are "virtually *per se* invalid." *Oregon Waste Systems, Inc.* v. *Department of Environmental Quality of Ore.*, 511 U. S. 93, 99. However, a facially discriminatory tax may survive Commerce Clause scrutiny if it is a truly "'compensatory tax' designed simply to make interstate commerce bear a burden already borne by intrastate commerce." *Associated Industries of Mo.* v. *Lohman*, 511 U. S. 641, 647. The tax at issue is clearly facially discriminatory, and therefore it must meet three conditions to be considered a valid compensatory tax, see *Oregon Waste*, *supra*, at 103. The Secretary has failed to show that the tax satisfies any of the requirements. Pp. 330–334.

(b) To meet the first condition, a State must identify the intrastate tax burden for which it is attempting to compensate, *Oregon Waste*, *supra*, at 103, and the intrastate tax must serve some purpose for which the State may otherwise impose a burden on interstate commerce. See *Maryland* v. *Louisiana*, 451 U. S. 725, 759. The Secretary claims that the intangibles tax compensates for the burden of the general corporate

income tax paid by corporations doing business in North Carolina and that the state service supported by the corporate income tax is the maintenance of an intrastate capital market. This Court, however, has recognized the danger of treating general revenue measures as relevant intrastate burdens for purposes of the compensatory tax doctrine. *Oregon Waste, supra,* at 105, n. 8. Moreover, it can reasonably be assumed that the State's blue sky laws, not its general corporate income tax, provide for the capital market's upkeep. Thus, the Secretary has pointed to no in-state activity or benefit that justifies the compensatory levy. Pp. 334–336.

(c) The second condition requires that the tax on interstate commerce approximate, but not exceed, the tax on intrastate commerce. *Oregon Waste, supra,* at 103. The relevant comparison—between the size of the intangibles tax and that of the corporate income tax component that purportedly funds the capital market—is for practical purposes impossible. The corporate income tax is a general form of taxation, not assessed according to the taxpayer's use of particular services, and before its revenues are earmarked for particular purposes they have been commingled with funds from other sources. Hence, the Secretary cannot show what proportion of that tax goes to support the capital market, or whether that proportion represents a burden greater than the one the intangibles tax imposes on interstate commerce. Pp. 336–338.

(d) The third condition requires the compensating taxes to fall on substantially equivalent events. The purpose of this requirement is to ensure that the actual payers of each tax are members of the same class, so that the effect of the compensating tax is to enable in-state and out-of-state businesses to compete on a footing of equality. *Henneford* v. *Silas Mason Co.,* 300 U. S. 577. Evaluating whether this requirement has been met will ordinarily require an analysis of the economic incidence of the respective taxes, an issue usually unsuited for judicial resolution. Here there are reasons to doubt that the relevant taxes have the same incidences, and while it is unlikely that a State can ever show that two taxes are equivalent outside the limited confines of sales and use taxes, it is enough to say here that no such showing has been made. Pp. 338–344.

(e) *Darnell, supra,* does not dictate a different result. That case appears to have evaluated a compensatory tax scheme under the rational basis standard generally employed under the Equal Protection Clause. In that respect, *Darnell,* along with *Kidd* v. *Alabama,* 188 U. S. 730, has been bypassed by later Commerce Clause decisions, which require discriminatory restrictions on commerce to pass the strictest scrutiny. Pp. 344–346.

(f) The state courts should determine in the first instance the proper remedy and whether Fulton has complied with the procedural requirements of the State's tax refund statute. Pp. 346–347.

338 N. C. 472, 450 S. E. 2d 728, reversed and remanded.

SOUTER, J., delivered the opinion for a unanimous Court. REHNQUIST, C. J., filed a concurring opinion, *post*, p. 348.

Jasper L. Cummings, Jr., argued the cause and filed briefs for petitioner.

Charles Rothfeld argued the cause for respondent. With him on the brief were *Michael F. Easley*, Attorney General of North Carolina, *Marilyn R. Mudge*, Assistant Attorney General, and *Laurie R. Rubenstein*.*

JUSTICE SOUTER delivered the opinion of the Court.

In this case we decide whether North Carolina's "intangibles tax" on a fraction of the value of corporate stock owned by North Carolina residents inversely proportional to the corporation's exposure to the State's income tax violates the Commerce Clause. We hold that it does.

I

During the period in question here, North Carolina levied an "intangibles tax" on the fair market value of corporate stock owned by North Carolina residents or having a "business, commercial, or taxable situs" in the State. N. C. Gen. Stat. § 105–203 (1992).[1] Although the tax was assessed at

**Jennifer Sartor Smart* filed a brief for the Commonwealth of Kentucky, Revenue Cabinet, as *amicus curiae* urging affirmance.

[1] The intangibles tax has subsequently been repealed. See 1995 N. C. Sess. Laws, ch. 41. Because the repeal has no retroactive effect, however, it does not affect the tax years at issue in this litigation. This case accordingly remains a justiciable controversy. See, *e. g.*, *Powell* v. *McCormack*, 395 U. S. 486, 498–500 (1969) (holding that the obviation of the petitioner's claim for injunctive relief did not render the whole case moot, when a damages claim for backpay remained).

a stated rate of one quarter of one percent, residents were entitled to calculate their tax liability by taking a taxable percentage deduction equal to the fraction of the issuing corporation's income subject to tax in North Carolina. *Ibid.* This figure was set by applying a corporate income tax apportionment formula averaging the portion of the issuing corporation's sales, payroll, and property located in the State. See § 105–130.4(i).

Thus, a corporation doing all of its business within the State would pay corporate income tax on 100% of its income, and the taxable percentage deduction allowed to resident owners of that corporation's stock under the intangibles tax would likewise be 100%. Stock in a corporation doing no business in North Carolina, on the other hand, would be taxable on 100% of its value. For the intermediate cases, holders of stock were able to look up the taxable percentage for a large number of corporations as determined and published annually by the North Carolina Secretary of Revenue (Secretary). In 1990, for example, the Secretary determined the appropriate taxable percentage of IBM stock to be 95%, meaning that IBM did 5% of its business in North Carolina, with its stock held by North Carolina residents being taxable on 95% of its value. N. C. Dept. of Revenue, Stock and Bond Values as of December 31, 1990, p. 39.

Petitioner Fulton Corporation is a North Carolina company owning stock in other corporations that do business out of state. In the 1990 tax year, at issue in this case, Fulton owned shares in six corporations, five of which did no business or earned no income in North Carolina and therefore were not subject to the State's corporate income tax. Fulton's stock in these corporations was accordingly subject to the intangibles tax on 100% of its value. Fulton also owned stock in Food Lion, Inc., which did 46% of its business in North Carolina, with the result that its stock was subject to the intangibles tax on 54% of its value. App. 11.

Fulton's intangibles tax liability for the 1990 tax year amounted to $10,884. It paid the tax and brought this action in state court under Rev. Stat. § 1979, as amended, 42 U. S. C. § 1983, seeking a declaratory judgment that the scheme based on the taxable percentage deduction violated the Commerce Clause by discriminating against interstate commerce. Fulton also sought a refund under the terms of the appropriate state statute, N. C. Gen. Stat. § 105–267 (1992), and attorney's fees under Rev. Stat. § 722, as amended, 42 U. S. C. § 1988. On the parties' cross-motions for summary judgment, the state trial court ruled in favor of the Secretary.

On appeal, North Carolina's Court of Appeals reversed, holding that the taxable percentage deduction violated the Commerce Clause. *Fulton Corp.* v. *Justus*, 110 N. C. App. 493, 430 S. E. 2d 494 (1993). The Court of Appeals saw a facial discrimination against shareholders in out-of-state corporations in forcing them to pay tax on a higher percentage of share value than shareholders of corporations operating solely in North Carolina. *Id.*, at 499, 430 S. E. 2d, at 498. The court rejected the Secretary's contention that the intangibles tax amounted to a valid "compensating tax" designed to place a burden on interstate commerce equal to what intrastate commerce already carried under the corporate income tax. *Id.*, at 499–501, 430 S. E. 2d, at 498–499. Finally, the Court of Appeals distinguished this Court's decision in *Darnell* v. *Indiana*, 226 U. S. 390 (1912), which held that Indiana could tax the stock of foreign corporations to the extent that those corporations were not subject to the State's tax on in-state property. Because the tax regime in *Darnell* was constructed to avoid the double taxation of corporate property values, a result not accomplished by North Carolina's intangibles tax, the Court of Appeals did not view *Darnell* as being on point. 110 N. C. App., at 501–504, 430 S. E. 2d, at 499–501. The court refused Fulton any retrospective relief, however, and held the proper remedy to be elimination

of the percentage deduction provision from the intangibles tax scheme. *Id.*, at 504–505, 430 S. E. 2d, at 501–502.

Both parties appealed to the Supreme Court of North Carolina, which reversed. *Fulton Corp.* v. *Justus*, 338 N. C. 472, 450 S. E. 2d 728 (1994). Without addressing whether the intangibles tax was facially discriminatory, the court read *Darnell* to compel a conclusion that the scheme here imposed a valid compensating tax, 338 N. C., at 477–480, 450 S. E. 2d, at 731–734, and it rejected Fulton's contention that *Darnell* had been overruled implicitly by this Court's more recent decisions on interstate taxation. 338 N. C., at 480–482, 450 S. E. 2d, at 734–735. The court reasoned, moreover, that corporate income is generally related to the value of corporate stock, and that in practice, the burden on interstate commerce imposed by the intangibles tax was less than that placed on intrastate commerce by the corporate income tax. *Id.*, at 479–480, 450 S. E. 2d, at 733–734.

We granted certiorari, 514 U. S. 1062 (1995), and now reverse.

II

The constitutional provision of power "[t]o regulate Commerce . . . among the several States," U. S. Const., Art. I, §8, cl. 3, has long been seen as a limitation on state regulatory powers, as well as an affirmative grant of congressional authority. See, *e. g.*, *Oklahoma Tax Comm'n* v. *Jefferson Lines, Inc.*, 514 U. S. 175, 179–180 (1995); *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824) (Marshall, C. J.) (dictum). In its negative aspect, the Commerce Clause "prohibits economic protectionism—that is, 'regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.'" *Associated Industries of Mo.* v. *Lohman*, 511 U. S. 641, 647 (1994) (quoting *New Energy Co. of Ind.* v. *Limbach*, 486 U. S. 269, 273–274 (1988)). This reading effectuates the Framers' purpose to "preven[t] a State from retreating into economic isolation or jeopardizing the welfare of the Nation

as a whole, as it would do if it were free to place burdens on the flow of commerce across its borders that commerce wholly within those borders would not bear." *Jefferson Lines, supra,* at 180.

In evaluating state regulatory measures under the dormant Commerce Clause, we have held that "the first step . . . is to determine whether it 'regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce.'" *Oregon Waste Systems, Inc.* v. *Department of Environmental Quality of Ore.,* 511 U. S. 93, 99 (1994) (quoting *Hughes* v. *Oklahoma,* 441 U. S. 322, 336 (1979)). With respect to state taxation, one element of the protocol summarized in *Complete Auto Transit, Inc.* v. *Brady,* 430 U. S. 274 (1977), treats a law as discriminatory if it "'tax[es] a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State.'" *Chemical Waste Management, Inc.* v. *Hunt,* 504 U. S. 334, 342 (1992) (quoting *Armco Inc.* v. *Hardesty,* 467 U. S. 638, 642 (1984)); see also *Boston Stock Exchange* v. *State Tax Comm'n,* 429 U. S. 318, 332, n. 12 (1977) (noting that a State "may not discriminate between transactions on the basis of some interstate element"). State laws discriminating against interstate commerce on their face are "virtually *per se* invalid." *Oregon Waste, supra,* at 99; see also *Philadelphia* v. *New Jersey,* 437 U. S. 617, 624 (1978).

We have also recognized, however, that a facially discriminatory tax may still survive Commerce Clause scrutiny if it is a truly "'compensatory tax' designed simply to make interstate commerce bear a burden already borne by intrastate commerce." *Associated Industries, supra,* at 647.[2]

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[2] We use the terms "compensatory" tax and "complementary" tax as two ways of describing the same phenomenon: a tax on interstate commerce "complements" a tax on intrastate commerce to the extent that it "compensates" for the burdens imposed on intrastate commerce by imposing a similar burden on interstate commerce. We have also described taxes

Thus, in *Henneford* v. *Silas Mason Co.*, 300 U. S. 577 (1937), we upheld the State of Washington's tax on the privilege of using any article of tangible personal property within the State. The statute exempted the use of any article that had already been subjected to a sales tax equal to the use tax or greater, so that the use tax effectively applied only to goods purchased out of state. Although the use tax was itself facially discriminatory, we held that the combined effect of the sales and use taxes was to subject intrastate and interstate commerce to equivalent burdens. "'There is no demand in . . . [the] Constitution that the State shall put its requirements in any one statute,'" we said; rather, "'[i]t may distribute them as it sees fit, if the result, taken in its totality, is within the State's constitutional power.'" *Id.*, at 584 (quoting *Gregg Dyeing Co.* v. *Query*, 286 U. S. 472, 480 (1932)). As Justice Cardozo explained for the Court, the complementary arrangement assures that "[w]hen the account is made up, the stranger from afar is subject to no greater burdens as a consequence of ownership than the dweller within the gates. The one pays upon one activity or incident, and the other upon another, but the sum is the same when the reckoning is closed." 300 U. S., at 584.

Since *Silas Mason*, our cases have distilled three conditions necessary for a valid compensatory tax. First, "a State must, as a threshold matter, 'identif[y] . . . the [intrastate tax] burden for which the State is attempting to compensate.'" *Oregon Waste, supra*, at 103 (quoting *Maryland* v. *Louisiana*, 451 U. S. 725, 758 (1981)). Second, "the tax on interstate commerce must be shown roughly to approximate—but not exceed—the amount of the tax on intrastate

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on interstate commerce as being imposed "in lieu" of taxes on intrastate commerce. See, *e. g.*, *Railway Express Agency, Inc.* v. *Virginia*, 358 U. S. 434, 436 (1959); *Postal Telegraph Cable Co.* v. *Adams*, 155 U. S. 688, 700 (1895). This last class of cases, however, has involved taxes which were at least arguably not facially discriminatory, and we have evaluated these cases under a somewhat different standard.

commerce." *Oregon Waste*, 511 U. S., at 103. "Finally, the events on which the interstate and intrastate taxes are imposed must be 'substantially equivalent'; that is, they must be sufficiently similar in substance to serve as mutually exclusive 'prox[ies]' for each other." *Ibid.* (quoting *Armco Inc.* v. *Hardesty, supra*, at 643).

III

There is no doubt that the intangibles tax facially discriminates against interstate commerce. A regime that taxes stock only to the degree that its issuing corporation participates in interstate commerce favors domestic corporations over their foreign competitors in raising capital among North Carolina residents and tends, at least, to discourage domestic corporations from plying their trades in interstate commerce. The Secretary practically concedes as much, and relies instead on the compensatory tax defense.[3] The only

[3] Although the Secretary does suggest that the tax is so small in amount as to have no practical impact at all, we have never recognized a "*de minimis*" defense to a charge of discriminatory taxation under the Commerce Clause. See, *e. g.*, *Associated Industries of Mo.* v. *Lohman*, 511 U. S. 641, 650 (1994) ("[A]ctual discrimination, wherever it is found, is impermissible, and the magnitude and scope of the discrimination have no bearing on the determinative question whether discrimination has occurred"); *Maryland* v. *Louisiana*, 451 U. S. 725, 760 (1981) ("We need not know how unequal the Tax is before concluding that it unconstitutionally discriminates"). We likewise reject the Secretary's speculation that the most likely effect, if any, of the taxable percentage deduction is to encourage out-of-state firms to compete in the North Carolina market so that their North Carolina shareholders may take advantage of the deduction. As we explain further, *supra*, at 330–331, such promotion of in-state markets at the expense of out-of-state ones furthers the "economic Balkanization" that our dormant Commerce Clause jurisprudence has long sought to prevent. *Hughes* v. *Oklahoma*, 441 U. S. 322, 325–326 (1979); see also *Halliburton Oil Well Cementing Co.* v. *Reily*, 373 U. S. 64, 72 (1963) (a State may not impose "a tax which is discriminatory in favor of the local merchant" so as to "encourag[e] an out-of-state operator to become a resident in order to compete on equal terms") (internal quotation marks and citation omitted).

issue, then, is whether the taxable percentage deduction can be sustained as compensatory.

A

As we have said, a State that invokes the compensatory tax defense must identify the intrastate tax for which it seeks to compensate, see *supra*, at 332, and it should go without saying that this intrastate tax must serve some purpose for which the State may otherwise impose a burden on interstate commerce. In *Maryland* v. *Louisiana*, 451 U. S. 725 (1981), for example, we rejected Louisiana's argument that, because it imposed a severance tax on natural resources extracted from its own soil, it could impose a compensating "first use" tax on resources produced out of state but used within Louisiana. Because "Louisiana has no sovereign interest in being compensated for the severance of resources from the federally owned [Outer Continental Shelf] land," we held that "[t]he two events are not comparable in the same fashion as a use tax complements a sales tax." *Id.*, at 759.

In this case, the Secretary suggests that the intangibles tax, with its taxable percentage deduction, compensates for the burden of the general corporate income tax paid by corporations doing business in North Carolina. But because North Carolina has no general sovereign interest in taxing income earned out of state, *Maryland* v. *Louisiana* teaches that the Secretary must identify some in-state activity or benefit in order to justify the compensatory levy. Indeed, we have repeatedly held that "no state tax may be sustained unless the tax . . . has a substantial nexus with the State . . . [and] is fairly related to the services provided by the State." *Id.*, at 754; see also *Jefferson Lines*, 514 U. S., at 183–184; *Complete Auto Transit, Inc.* v. *Brady*, 430 U. S., at 279. The Secretary does not disagree, but rather insists that North Carolina may impose a compensatory tax upon foreign corpo-

rations because they may avail themselves of access to North Carolina's capital markets.

The Secretary's theory is that one of the services provided by the State, and supported through its general corporate income tax, is the maintenance of a capital market for corporations wishing to sell stock to North Carolina residents. Since those corporations escape North Carolina's income tax to the extent those corporations do business in other States, the Secretary says, the State may require those companies to pay for the privilege of access to the State's capital markets by a tax on the value of the shares sold. So, the Secretary concludes, the intangibles tax "rests squarely on 'the settled principle that interstate commerce may be made to pay its way.'" Brief for Respondent 18 (quoting *Oregon Waste*, 511 U. S., at 102).

The argument is unconvincing, and we rejected a counterpart of it in *Oregon Waste*, where we held that Oregon could not charge an increased fee for disposal of waste generated out of state on the theory that in-state waste generators supported the cost of waste disposal facilities through general income taxes. Although we relied primarily upon the conclusion that earning income and disposing of waste are not "substantially equivalent taxable events," *id.*, at 105, we also spoke of the danger of treating general revenue measures as relevant intrastate burdens for purposes of the compensatory tax doctrine. "[P]ermitting discriminatory taxes on interstate commerce to compensate for charges purportedly included in general forms of intrastate taxation would allow a state to tax interstate commerce more heavily than in-state commerce anytime the entities involved in interstate commerce happened to use facilities supported by general state tax funds." *Id.*, at 105, n. 8 (internal quotation marks and citation omitted). We declined then, as we do now, "to open such an expansive loophole in our carefully confined compensatory tax jurisprudence." *Ibid.*

Even shutting our eyes to that loophole, we are unpersuaded that North Carolina's corporate income tax is designed to support the maintenance of an intrastate capital market. North Carolina, like most States, regulates access to its capital markets by means of blue sky laws, see generally N. C. Gen. Stat. ch. 78A (1994), and their accompanying regulations, which prescribe who may sell securities in North Carolina, the procedures that must be followed to do so, and the fees imposed for the privilege. See, *e. g.*, N. C. Gen. Stat. § 78A–28 (1994) (registration procedures and fees); 18 N. C. Admin. Code § 6.1304 (1990) (same). Absent probative evidence to the contrary, which the Secretary has not supplied, we can reasonably assume that North Carolina has provided for the upkeep of its capital market through these provisions, not through the general corporate income tax.[4]

If the corporate income tax does not support the maintenance of North Carolina's capital market, then the State has not justified imposition of a compensating levy on the ownership of shares in corporations not subject to the income tax. While we need not hold that a State may never justify a compensatory tax by an intrastate burden included in a general form of taxation, the linkage in this case between the intrastate burden and the benefit shared by out-of-staters is far too tenuous to overcome the risk posed by recognizing a general levy as a complementary twin.

B

The second prong of our analysis requires that "the tax on interstate commerce . . . be shown roughly to approximate—but not exceed—the amount of the tax on intrastate commerce." *Oregon Waste*, *supra*, at 103. The Secretary ar-

[4] Our skepticism regarding the Secretary's capital markets argument is reinforced by the fact that the Secretary did not advance it to the state courts.

gues that the relative magnitudes of the corporate income tax and the intangibles tax can be evaluated best by reference to the price/earnings (P/E) ratios of taxpayer firms. This ratio represents the relationship of the value of a corporation's stock, the target of the intangibles tax, to the corporation's earnings, which are subjected to the income tax. See 3 New Palgrave Dictionary of Money & Finance 176 (1992). North Carolina taxes corporate income and ownership of stock at rates of 7.75% and .25%, respectively. Given these rates, the State Supreme Court found that "a North Carolina corporation need only have a P/E ratio less than 31 (7.75/.25) in order to have the tax against its income exceed the intangibles tax against the stockholders of a comparable corporation doing business only in [other States] and having all its shareholders in North Carolina. Since P/E ratios are only rarely greater than 31, most out-of-state corporations will in fact be paying less taxes to North Carolina . . . than a similar North Carolina corporation." 338 N. C., at 480, 450 S. E. 2d, at 733 (footnotes omitted).

The math is fine, but even leaving aside the issue of who is really paying the taxes, the example compares apples to oranges. When a corporation doing business in a State pays its general corporate income tax, it pays for a wide range of things: construction and maintenance of a transportation network, institutions that educate the work force, local police and fire protection, and so on. The Secretary's justification for the intangibles tax, however, rests on only one of the many services funded by the corporate income tax, the maintenance of a capital market for the shares of both foreign and domestic corporations. To the extent that corporations do their business outside North Carolina, after all, they get little else from the State. Even, then, if we suppressed our suspicion that North Carolina actually funds its capital market through its blue sky fees, not its general corporate taxation, the relevant comparison for our analysis has to be between the size of the intangibles tax and that of the cor-

porate income taxes component that purportedly funds the capital market.

That comparison, of course, is for the present practical purpose impossible. The corporate income tax is a general form of taxation, not assessed according to the taxpayer's use of particular services, and before its revenues are earmarked for particular purposes they have been commingled with funds from other sources. As a result, the Secretary cannot tell us what proportion of the corporate income tax goes to support the capital market, or whether that proportion represents a burden greater than the one imposed on interstate commerce by the intangibles tax. True, it is not inconceivable, however unlikely, that a capital markets component of the corporate income tax exceeds the intangibles tax in magnitude, but the Secretary cannot carry her burden of demonstrating this on the record in front of us.

This difficulty simply confirms our general unwillingness to "permi[t] discriminatory taxes on interstate commerce to compensate for charges purportedly included in general forms of intrastate taxation." *Oregon Waste*, 511 U. S., at 105, n. 8. Where general forms of taxation are involved, we ordinarily cannot even begin to make the sorts of quantitative assessments that the compensatory tax doctrine requires. See *infra*, at 341–343.

C

The tax, finally, fails even the third prong of compensatory tax analysis, which requires the compensating taxes to fall on substantially equivalent events. Although we found such equivalence in the sales/use tax combination at issue in *Silas Mason*, our more recent cases have shown extreme reluctance to recognize new compensatory categories. In *Oregon Waste*, we even pointed out that "use taxes on products purchased out of state are the only taxes we have upheld in recent memory under the compensatory tax doctrine." 511 U. S., at 105. On the other hand, we have rejected equivalence arguments for pairing taxes upon the earning of in-

come and the disposing of waste, *ibid.*, the severance of natural resources from the soil and the use of resources imported from other States, *Maryland* v. *Louisiana*, 451 U. S., at 759, and the manufacturing and wholesaling of tangible goods, *Tyler Pipe Industries, Inc.* v. *Washington State Dept. of Revenue*, 483 U. S. 232, 244 (1987); *Armco Inc.* v. *Hardesty*, 467 U. S., at 642. In each case, we held that the paired activities were not "sufficiently similar in substance to serve as mutually exclusive prox[ies] for each other." *Oregon Waste*, *supra*, at 103 (internal quotation marks and citation omitted).

In the face of this trend, the Secretary argues that North Carolina has assured substantial equivalence by employing the same apportionment formula to tie the percentage of share value subject to the intangibles tax directly to the percentage of income earned within the State. See N. C. Gen. Stat. § 105–130.4(i) (1992). The Secretary further contends that the intangibles tax and the corporate income tax fall on substantially equivalent "events" because they fall on economically equivalent "values": the value of a corporation's stock and the value of a corporation's income, respectively. Even assuming the truth of both these assertions, however, we find that the intangibles tax is not functionally equivalent to the corporate income tax.

By equivalence of value, the Secretary means that the value reached by the intangibles tax reflects that targeted by the income tax to a substantial degree because of the influence of corporate earnings on the price of stock. While that may be true enough,[5] it does not explain away the fact

[5] It is generally well accepted that corporate income will ordinarily be a good indicator of the stock's value. See, *e. g.*, J. Weston & E. Brigham, Essentials of Managerial Finance 254–257 (10th ed. 1993). While there may be cases in which other factors will play a more significant role, and while the past corporate earnings that the income tax reaches may be an imperfect proxy for the anticipated future earnings upon which stock price is actually based, we are willing to accept the Secretary's judgment that the taxed values correspond for purposes of this case.

that the taxes are apparently different (quite apart from stated rates) in a number of obvious respects, including the parties ostensibly taxed. Something more than mere influence of the one stated tax base on the value of the other would therefore be necessary before we could conclude that equivalent events (or "values") are taxed. The nature of that something more flows from the objective of the equivalent-event requirement, which is to enable in-state and out-of-state businesses to compete on a footing of equality. In *Silas Mason*, for example, we observed that "[t]he practical effect" of Washington's sales/use tax regime "must be that retail sellers in Washington will be helped to compete upon terms of equality with retail dealers in other states who are exempt from a sales tax or any corresponding burden." 300 U. S., at 581; see also *Halliburton Oil Well Cementing Co.* v. *Reily*, 373 U. S. 64, 70 (1963) ("[E]qual treatment for in-state and out-of-state taxpayers similarly situated is the condition precedent for a valid use tax on goods imported from out-of-state"). This equality of treatment does not appear when the allegedly compensating taxes fall respectively on taxpayers who are differently described, as, for example, resident shareholders and corporations doing business out of state. A State defending such a scheme as one of complementary taxation, therefore, has the burden of showing that the actual incidences of the two tax burdens are different enough from their nominal incidences so that the real taxpayers are within the same class, and that therefore a finding of combined neutrality on interstate competition would at least be possible.[6]

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[6] *Silas Mason* makes clear that actual incidence upon the same class of taxpayers is a necessary condition for a finding that two taxes are complementary. Our analysis has sometimes focused upon other factors, however, see, *e. g.*, *Armco Inc.* v. *Hardesty*, 467 U. S. 638, 643 (1984), and we need not decide today whether identity of tax incidence is *sufficient* to compel the conclusion that two taxes fall upon substantially equivalent events.

In principle, the door may be open for such an argument. It is well established that "the ultimate distribution of the burden of taxes [may] be quite different from the distribution of statutory liability," McLure, Incidence Analysis and the Supreme Court: An Examination of Four Cases from the 1980 Term, 1 Sup. Ct. Econ. Rev. 69, 72 (1982), with such divergence occurring when the nominal taxpayer can pass it through to other parties, like consumers. The Secretary's equivalence argument might work in the present case, then, if we could find that the economic impact of North Carolina's corporate income tax is passed through to shareholders of corporations doing business in state in a way that offsets the disincentive imposed by the intangibles tax to buying stock in corporations doing business out of state.

But there is a problem with this line of argument, and it lies in the frequently extreme complexity of economic incidence analysis. The actual incidence of a tax may depend on elasticities of supply and demand, the ability of producers and consumers to substitute one product for another, the structure of the relevant market, the timeframe over which the tax is imposed and evaluated, and so on. See, *e. g.*, *Commonwealth Edison Co.* v. *Montana*, 453 U. S. 609, 619, n. 8 (1981) (determining "whether the tax burden is shifted out of State, rather than borne by in-state producers and consumers, would require complex factual inquiries about such issues as elasticity of demand for the product and alternative sources of supply").[7] We declined to shoulder any such analysis in *Minneapolis Star & Tribune Co.* v. *Minnesota*

[7] Other factors may also be important, depending on the particular case. These include "whether (1) the taxed product is a final or intermediate good, (2) the tax is large or small, (3) prices are rising or falling, (4) the costs of the taxed enterprise are increasing or decreasing, (5) the factors of production are mobile, (6) the taxed industry is subject to government regulation, and (7) in the federal system, the state imposing the tax dominates the market for the taxed good or service." Hellerstein, Complementary Taxes as a Defense to Unconstitutional State Tax Discrimination, 39 Tax Lawyer 405, 439 (1986).

Comm'r of Revenue, 460 U. S. 575, 589–590, and nn. 12–14 (1983), noting that "courts as institutions are poorly equipped to evaluate with precision the relative burdens of various methods of taxation. The complexities of factual economic proof always present a certain potential for error, and courts have little familiarity with the process of evaluating the relative economic burden of taxes" (footnote omitted). We were likewise unwilling to "plunge . . . into the morass of weighing comparative tax burdens by comparing taxes on dissimilar events" in *Oregon Waste*. 511 U. S., at 105 (internal quotation marks omitted). Indeed, the general difficulty of comparing the economic incidence of state taxes paid by different taxpayers upon different transactions goes a long way toward explaining why we have so seldom recognized a valid compensatory tax outside the context of sales and use taxes.[8] See Hellerstein, Complementary Taxes as a Defense to Unconstitutional State Tax Discrimination, 39 Tax Law-

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[8] The only exception of which we are aware is *Hinson* v. *Lott*, 8 Wall. 148 (1869). In that case, we upheld an Alabama tax on each gallon of liquor imported into the State on the ground that it complemented a tax of equal magnitude on each gallon of liquor distilled in the State. We noted that this tax scheme was "necessary to make the tax equal on all liquors sold in the State," *id.*, at 153, a rationale consistent with our conclusion that the compensatory tax doctrine is fundamentally concerned with equalizing competition between in-staters and out-of-staters. Indeed, we cited *Hinson* in support of a similar proposition in *Silas Mason*. See *Henneford* v. *Silas Mason*, 300 U. S. 577, 585 (1937). In determining that a tax on importers and distillers would actually equalize competition in the liquor market, the *Hinson* Court made a good commonsense estimate of the likely incidence of the two taxes. Simply because modern economic tools may indicate that the incidence question is more complex, moreover, does not undermine the basic principle of equal competition established in *Hinson*. By the same token, however, *Hinson* does not alter our conclusion today that courts will ordinarily be unable to evaluate the economic equivalence of allegedly complementary tax schemes that go beyond traditional sales/use taxes. See *supra*, at 337–338, this page and 343. So much for *Hinson* in theory; for *Hinson* in practice, compare it with *Armco*, *supra*.

yer 405, 434, n. 197, 458 (1986) (noting that sales and use taxes require no economic incidence analysis because they are strict functional equivalents for one another).

In this case, not only has the State failed to proffer any analysis addressing the complexity of its burden, but we have particular reason to doubt the Secretary's suggestion that domestic corporate income taxes are so reflected in the stock values of corporations doing business in state as to offset the effects of the intangibles tax. Because corporations operating in North Carolina do not exhaust the market for investment opportunities, investors are free to look elsewhere if North Carolina's corporate income tax has the effect of depressing the value of shares in corporations doing business in the State. Hence, the impact of the income tax will be reflected in the purchase price of these shares, investors will presumably earn a market return on a lower outlay, and the actual burden of the tax will be borne by other parties, such as the consumers of the corporations' products. See McClure, *supra*, at 82; see also McClure, The Elusive Incidence of the Corporate Income Tax: The State Case, 9 Pub. Finance Q. 395, 401 (1981). But because North Carolina investors make up a relatively small proportion of the participants in national capital markets, it is unlikely that the stock price of corporations doing business outside the State will reflect the impact of the intangibles tax. The economic incidence of this tax is thus likely to fall squarely on the shareholder. All other things being equal, then, a North Carolina investor will probably favor investment in corporations doing business within the State, and the intangibles tax will have worked an impermissible result. See *Halliburton*, 373 U. S., at 72 (States may not impose discriminatory taxes on interstate commerce in the hopes of encouraging firms to do business within the State); *Dean Milk Co.* v. *Madison*, 340 U. S. 349, 356 (1951) (observing that the creation of "preferential trade areas" is "destructive of the very purpose of the Commerce Clause").

All other things, of course, are rarely equal, and investors may wish to invest in corporations doing business in North Carolina for any number of reasons, perhaps affecting the degree to which the corporate income tax is or is not passed through to shareholders. Our point, however, is simply that there are reasons to doubt the Secretary's contention that the corporate income tax amounts to a clear equivalent for the burden on shareholding imposed by the intangibles tax, and these doubts are dispositive. After all, "the concept of the compensatory tax . . . is merely a specific way of justifying a facially discriminatory tax as achieving a legitimate local purpose that cannot be achieved through nondiscriminatory means." *Oregon Waste*, *supra*, at 102. As with any other defense of a facially discriminatory tax, the State has the burden to show that the requirements of the compensatory tax doctrine are clearly met. Cf. *Chemical Waste Management, Inc.* v. *Hunt*, 504 U. S., at 342–343 (noting that "'facial discrimination invokes the strictest scrutiny of any purported legitimate local purpose'") (quoting *Hughes* v. *Oklahoma*, 441 U. S. 322, 337 (1979)). While we doubt that such a showing can ever be made outside the limited confines of sales and use taxes, it is enough to say here that no such showing has been made.

IV

Our finding that North Carolina has failed to show that its intangibles tax satisfies any of the three requirements for a valid compensatory tax leaves the tax unconstitutional as facially discriminatory under our modern tests. The Secretary argues, however, that our decision in *Darnell* v. *Indiana*, 226 U. S. 390 (1912), compels us to sustain the North Carolina statute. The statutory scheme at issue in *Darnell* taxed all shares in foreign corporations owned by Indiana residents as well as all shares in domestic corporations to the extent that the issuing corporations' property was not subject to Indiana's general property tax. Writing for the Court, Justice Holmes found that "[t]he only difference of

treatment . . . that concerns the defendants is that the State taxes the property of domestic corporations and the stock of foreign ones in similar cases." *Id.*, at 398. This arrangement, he concluded, "is consistent with substantial equality notwithstanding the technical differences." *Ibid.*[9]

Justice Holmes has been praised for the lucidity of his reasoning, as having been "wrong clearly" even where he erred, see Hart, Positivism and the Separation of Law and Morals, 71 Harv. L. Rev. 593 (1958), but the opinion in *Darnell* does not exemplify his customary merit. He gives no explanation for the conclusion quoted, commenting only that the discrimination issue "was decided in *Kidd* v. *Alabama*, 188 U. S. 730, 732 [(1903)]." 226 U. S., at 398. *Kidd*, however, was decided under the Equal Protection Clause of the Fourteenth Amendment and emphasized "the large latitude allowed to the States for classification upon any reasonable basis." 188 U. S., at 733 (citations omitted). The exclusive reliance upon *Kidd* in *Darnell* thus indicates that the latter case should be viewed primarily as one of equal protection, despite the fact that Indiana's shareholder tax was challenged under both the Equal Protection and Commerce Clauses.

To the extent that *Darnell* evaluated a discriminatory state tax under the Equal Protection Clause, time simply has passed it by. While we continue to measure the equal protection of economic legislation by a "rational basis" test, see, *e. g.*, *FCC* v. *Beach Communications, Inc.*, 508 U. S. 307, 313 (1993), we now understand the dormant Commerce Clause to require "justifications for discriminatory restrictions on commerce [to] pass the 'strictest scrutiny.'" *Oregon Waste*, 511 U. S., at 101 (quoting *Hughes* v. *Oklahoma*, *supra*, at 337); see also *Chemical Waste Management, Inc.*

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[9] The Court did recognize as problematic the Indiana statute's failure to exempt shares of foreign corporations to the extent that those corporations owned, and were taxed upon, property within the State. Justice Holmes noted, however, that the petitioners lacked standing to raise that claim. 226 U. S., at 398.

v. *Hunt*, *supra*, at 342–343; *Philadelphia* v. *New Jersey*, 437 U. S. 617, 624 (1978).[10] Hence, while cases like *Kidd* and *Darnell* may still be authorities under the Equal Protection Clause, they are no longer good law under the Commerce Clause. Cf. *Associated Industries of Mo.* v. *Lohman*, 511 U. S., at 652 (holding that, although a prior case applied a more lenient equal protection analysis to a Commerce Clause challenge, it had been "bypassed by later decisions"). North Carolina's intangibles tax cannot pass muster under modern compensatory tax cases, and *Darnell* cannot save it.

V

North Carolina's intangibles tax facially discriminates against interstate commerce, it fails justification as a valid compensatory tax, and, accordingly, it cannot stand. At the same time, of course, it is true that "a State found to have imposed an impermissibly discriminatory tax retains flexibility in responding to this determination." *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18, 39–40 (1990). In *McKesson*, for example, we said that a State might refund the additional taxes imposed upon the victims of its discrimination or, to the extent consistent with other constitutional provisions (notably due process), retroactively impose equal burdens on the tax's former beneficiaries. A State may also combine these two approaches. *Ibid.* These options are available because the Constitution requires only that "the resultant tax actually assessed during the contested tax

[10] Cf., *e. g.*, *Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U. S. 522, 528 (1959) ("[I]t has long been settled that a [tax] classification, though discriminatory, is not . . . violative of the Equal Protection Clause . . . if any state of facts reasonably can be conceived that would sustain it"). One commentator has observed that, "[b]ecause the states enjoy extremely broad leeway under the equal protection clause in drawing lines for tax purposes, they normally have no need to defend a discriminatory tax classification on the ground that a 'complementary' levy is imposed on other taxpayers." Hellerstein, 39 Tax Lawyer, at 428 (footnote omitted).

period reflec[t] a scheme that does not discriminate against interstate commerce." *Id.*, at 41.[11]

In this case, that choice may well be dictated by the severability clause enacted as part of the intangibles tax statute. N. C. Gen. Stat. § 105–215 (1992). That issue, however, as well as the question whether Fulton has properly complied with the procedural requirements of North Carolina's tax refund statute, § 105–267, ought to come before the state courts in the first instance. Cf. *Swanson* v. *State*, 335 N. C. 674, 680–681, 441 S. E. 2d 537, 541 (noting that "[f]ailure to comply with the requirements in section 105–267 bars a taxpayer's action against the State for a refund of taxes"), cert. denied, 513 U. S. 1056 (1994).[12] Where "the federal constitutional issues involved [in the remedial determination] may well be intertwined with, or their consideration obviated by, issues of state law," our practice is to leave the remedy for the state supreme court to fashion on remand. *Bacchus Imports, Ltd.* v. *Dias*, 468 U. S. 263, 277 (1984); see also *Tyler Pipe Industries* v. *Dept. of Revenue*, 483 U. S., at 252; *Williams* v. *Vermont*, 472 U. S. 14, 28 (1985). We do that here.

The judgment of the North Carolina Supreme Court is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

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[11] We have also suggested that a " 'meaningful opportunity for taxpayers to withhold contested tax assessments and to challenge their validity in a predeprivation hearing' is itself sufficient to satisfy constitutional concerns." *Associated Industries*, 511 U. S., at 656 (quoting *McKesson*, 496 U. S., at 38, n. 21). The Secretary has not asserted that such an opportunity was afforded to Fulton under North Carolina's remedial scheme.

[12] The North Carolina Court of Appeals in this case did address the severability clause, holding that it required that the intangibles tax continue in effect without the taxable percentage deduction. *Fulton Corp.* v. *Justus*, 110 N. C. App. 493, 504, 430 S. E. 2d 494, 501 (1993). Because the North Carolina Supreme Court found the tax to be valid, however, it did not reach this question.

CHIEF JUSTICE REHNQUIST, concurring.

Darnell v. *Indiana*, 226 U. S. 390 (1912), required that taxation of interstate transactions be "consistent with substantial equality notwithstanding the technical differences." *Id.*, at 398. Whether or not North Carolina's intangibles tax would satisfy *Darnell*'s "substantial equality" requirement, I agree that the tax is not consistent with this Court's more recent requirement that there be "substantial equivalence" between an in-state taxable event and the interstate event on which a State levies a compensatory tax. *Ante*, at 345–346. I have expressed in dissent my belief that the "substantial equivalence" test deviates from the principle articulated in earlier cases that "'equality for the purposes of competition and the flow of commerce'" should be "'measured in dollars and cents, not legal abstractions,'" *Armco Inc.* v. *Hardesty*, 467 U. S. 638, 647 (1984) (quoting *Halliburton Oil Well Cementing Co.* v. *Reily*, 373 U. S. 64, 70 (1963)), and it might be argued accordingly that *Darnell* is more "realistic," 467 U. S., at 648. However, my view has not prevailed, and *Darnell* simply cannot be reconciled with the compensatory-tax decisions cited in the Court's opinion, *ante*, at 345–346. I therefore join the opinion of the Court.

Syllabus

PEACOCK *v.* THOMAS

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 94–1453. Argued November 6, 1995—Decided February 21, 1996

Respondent Thomas filed an Employee Retirement Income Security Act of 1974 (ERISA) class action against his former employer, Tru-Tech, Inc., and petitioner Peacock, a Tru-Tech officer and shareholder, alleging that they had breached their fiduciary duties to the class in administering Tru-Tech's pension benefits plan, and seeking benefits due under the plan. The District Court entered a money judgment against Tru-Tech upon finding that it had breached its fiduciary duties, but ruled that Peacock was not a fiduciary. Thomas did not execute the judgment while the case was on appeal and, during that time, Peacock settled many of Tru-Tech's accounts with favored creditors, including himself. After the Court of Appeals affirmed the judgment and attempts to collect it from Tru-Tech proved unsuccessful, Thomas sued Peacock in federal court, asserting, *inter alia*, a claim for "Piercing the Corporate Veil Under ERISA and Applicable Federal Law." The District Court ultimately agreed to pierce the corporate veil and entered judgment against Peacock in the amount of the judgment against Tru-Tech. The Court of Appeals affirmed, holding that the District Court properly exercised ancillary jurisdiction over Thomas' suit.

Held: The District Court lacked jurisdiction over Thomas' subsequent suit. Pp. 352–360.

(a) Neither ERISA's jurisdictional provision, 29 U. S. C. § 1132(e)(1), nor 28 U. S. C. § 1331 supplied the District Court with subject-matter jurisdiction over this suit. The Court rejects Thomas' suggestion that the suit arose under 29 U. S. C. § 1132(a)(3), which authorizes civil actions for "appropriate equitable relief . . . to redress [any] violations . . . of [ERISA] or the terms of [an ERISA] plan." Because Thomas' complaint in this lawsuit alleged no such violations, he failed to allege a claim for equitable relief. Even if ERISA permits a plaintiff to pierce the corporate veil, such piercing is not itself an independent ERISA cause of action and cannot independently support federal jurisdiction. The District Court erred in finding that he had properly stated such a claim, since ERISA does not provide for imposing liability for an extant ERISA judgment against a third party. Pp. 352–354.

(b) Federal courts do not possess ancillary jurisdiction over new actions in which a federal judgment creditor seeks to impose liability for

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a money judgment on a person not otherwise liable for the judgment. Although ancillary jurisdiction may be exercised (1) to permit disposition by a single court of factually interdependent claims, and (2) to enable a court to function successfully by effectuating its decrees, Thomas has not carried his burden of demonstrating that this suit falls within either category. First, because a federal court sitting in a subsequent lawsuit involving claims with no independent basis for jurisdiction lacks the threshold jurisdictional power that exists when ancillary claims are asserted in the same proceeding as the claims conferring federal jurisdiction, claims alleged to be factually interdependent with and, hence, ancillary to claims brought in the earlier suit will not support federal jurisdiction over the subsequent suit. In any event, there is insufficient factual or logical interdependence between the claims raised in Thomas' first and second suits. Second, cases in which this Court has approved the exercise of ancillary enforcement jurisdiction over attachment, garnishment, and other supplementary proceedings involving third parties are inapposite. This case is governed by *H. C. Cook Co.* v. *Beecher*, 217 U. S. 497, in which the Court refused to authorize the exercise of ancillary jurisdiction in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment. As long as the Federal Rules of Civil Procedure sufficiently protect a judgment creditor's ability to execute on a judgment, ancillary jurisdiction should not be exercised over proceedings, such as the present, that are new actions based on different theories of relief than the prior decree. Pp. 354–359.

39 F. 3d 493, reversed.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, *post*, p. 360.

David L. Freeman argued the cause for petitioner. With him on the briefs were *J. Theodore Gentry, Carter G. Phillips,* and *Richard D. Bernstein.*

J. Kendall Few argued the cause for respondent. With him on the brief were *John C. Few, Margaret A. Chamberlain,* and *James R. Gilreath.*

Richard P. Bress argued the cause for the United States as *Amicus Curiae* in support of respondent. With him on the brief were *Solicitor General Days, Deputy Solicitor*

General Kneedler, Thomas S. Williamson, Jr., Allen H. Feldman, Nathaniel I. Spiller, and *Edward D. Sieger.**

JUSTICE THOMAS delivered the opinion of the Court.

This case presents the issue whether federal courts possess ancillary jurisdiction over new actions in which a federal judgment creditor seeks to impose liability for a money judgment on a person not otherwise liable for the judgment. We hold that they do not.

I

Respondent Jack L. Thomas is a former employee of Tru-Tech, Inc. In 1987, Thomas filed an ERISA class action in federal court against Tru-Tech and petitioner D. Grant Peacock, an officer and shareholder of Tru-Tech, for benefits due under the corporation's pension benefits plan. Thomas alleged primarily that Tru-Tech and Peacock breached their fiduciary duties to the class in administering the plan. The District Court found that Tru-Tech had breached its fiduciary duties, but ruled that Peacock was not a fiduciary. On November 28, 1988, the District Court entered judgment in the amount of $187,628.93 against Tru-Tech only. *Thomas* v. *Tru-Tech, Inc.*, No. 87–2243–3 (D. S. C.). On April 3, 1990, the Court of Appeals for the Fourth Circuit affirmed. Judgt. order reported at 900 F. 2d 256. Thomas did not exe-

Robert P. Davis and *Kenneth S. Geller* filed a brief for the National Association of Real Estate Investment Managers as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Association of Retired Persons et al. by *Steven S. Zaleznick, Mary Ellen Signorille, Jeffrey Lewis,* and *Ronald Dean;* for the American Federation of Labor and Congress of Industrial Organizations by *Virginia A. Seitz, David M. Silberman,* and *Laurence Gold;* for the Bricklayers & Trowel Trades International Pension Fund by *Ira R. Mitzner* and *Woody N. Peterson;* for the Central States, Southeast and Southwest Areas Health and Welfare and Pension Fund by *Thomas C. Nyhan, Terrence C. Craig,* and *James P. Condon;* and for the National Coordinating Committee for Multiemployer Plans by *Diana L. S. Peters.*

cute the judgment while the case was on appeal and, during that time, Peacock settled many of Tru-Tech's accounts with favored creditors, including himself.

After the Court of Appeals affirmed the judgment, Thomas unsuccessfully attempted to collect the judgment from Tru-Tech. Thomas then sued Peacock in federal court, claiming that Peacock had entered into a civil conspiracy to siphon assets from Tru-Tech to prevent satisfaction of the ERISA judgment.[1] Thomas also claimed that Peacock fraudulently conveyed Tru-Tech's assets in violation of South Carolina and Pennsylvania law. Thomas later amended his complaint to assert a claim for "Piercing the Corporate Veil Under ERISA and Applicable Federal Law." App. 49. The District Court ultimately agreed to pierce the corporate veil and entered judgment against Peacock in the amount of $187,628.93—the precise amount of the judgment against Tru-Tech—plus interest and fees, notwithstanding the fact that Peacock's alleged fraudulent transfers totaled no more than $80,000. The Court of Appeals affirmed, holding that the District Court properly exercised ancillary jurisdiction over Thomas' suit. 39 F. 3d 493 (CA4 1994). We granted certiorari to determine whether the District Court had subject-matter jurisdiction and to resolve a conflict among the Courts of Appeals.[2] 514 U. S. 1126 (1995). We now reverse.

II

Thomas relies on the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 832, as amended, 29

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[1] Peacock's attorney was also named as a defendant in the suit, but the District Court rejected the claim against him.

[2] Compare 39 F. 3d 493 (CA4 1994) (case below), *Argento* v. *Melrose Park*, 838 F. 2d 1483 (CA7 1988), *Skevofilax* v. *Quigley*, 810 F. 2d 378 (CA3) (en banc), cert. denied, 481 U. S. 1029 (1987), and *Blackburn Truck Lines, Inc.* v. *Francis*, 723 F. 2d 730 (CA9 1984), with *Sandlin* v. *Corporate Interiors Inc.*, 972 F. 2d 1212 (CA10 1992), and *Berry* v. *McLemore*, 795 F. 2d 452 (CA5 1986).

U. S. C. § 1001 *et seq.*, as the source of federal jurisdiction for this suit. The District Court did not expressly rule on subject-matter jurisdiction, but found that Thomas had properly stated a claim under ERISA for piercing the corporate veil. We disagree. We are not aware of, and Thomas does not point to, any provision of ERISA that provides for imposing liability for an extant ERISA judgment against a third party. See *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 833 (1988) ("ERISA does not provide an enforcement mechanism for collecting judgments . . .").

We reject Thomas' suggestion, not made in the District Court, that this subsequent suit arose under § 502(a)(3) of ERISA, which authorizes civil actions for "appropriate equitable relief" to redress violations of ERISA or the terms of an ERISA plan. 29 U. S. C. § 1132(a)(3). Thomas' complaint in this lawsuit alleged no violation of ERISA or of the plan. The wrongdoing alleged in the complaint occurred in 1989 and 1990, some four to five years after Tru-Tech's ERISA plan was terminated, and Thomas did not—indeed, could not—allege that Peacock was a fiduciary to the terminated plan.[3] Thomas further concedes that Peacock's alleged wrongdoing "did not occur with respect to the administration or operation of the plan." Brief for Respondent 11. Under the circumstances, we think Thomas failed to allege a claim under § 502(a)(3) for equitable relief. Section 502(a)(3) "does not, after all, authorize 'appropriate equitable relief' *at large*, but only 'appropriate equitable relief' for the purpose of 'redress[ing any] violations or . . . enforc[ing] any provisions' of ERISA or an ERISA plan." *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 253 (1993) (emphasis and modifications in original).

Moreover, Thomas' veil-piercing claim does not state a cause of action under ERISA and cannot independently sup-

[3] The District Court in the original ERISA suit ruled that Peacock was not a fiduciary to Tru-Tech's plan.

port federal jurisdiction. Even if ERISA permits a plaintiff to pierce the corporate veil to reach a defendant not otherwise subject to suit under ERISA, Thomas could invoke the jurisdiction of the federal courts only by independently alleging a violation of an ERISA provision or term of the plan.[4] Piercing the corporate veil is not itself an independent ERISA cause of action, "but rather is a means of imposing liability on an underlying cause of action." 1 C. Keating & G. O'Gradney, Fletcher Cyclopedia of Law of Private Corporations § 41, p. 603 (perm. ed. 1990). Because Thomas alleged no "underlying" violation of any provision of ERISA or an ERISA plan, neither ERISA's jurisdictional provision, 29 U. S. C. § 1132(e)(1), nor 28 U. S. C. § 1331 supplied the District Court with subject-matter jurisdiction over this suit.

III

Thomas also contends that this lawsuit is ancillary to the original ERISA suit.[5] We have recognized that a federal court may exercise ancillary jurisdiction "(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Kokkonen* v. *Guardian Life Ins. Co.*, 511 U. S. 375, 379–380 (1994) (citations omitted). Thomas has not carried his burden of demonstrating that this suit falls within either cate-

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[4] This case is not at all like *Anderson* v. *Abbott*, 321 U. S. 349 (1944), cited by Thomas' *amici*, in which the receiver of a federal bank, having obtained a judgment against the bank, then sued the bank's shareholders to hold them liable for the judgment. In *Anderson*, federal jurisdiction was founded upon a federal law, 12 U. S. C. §§ 63, 64 (repealed), which specifically made shareholders of an undercapitalized federal bank liable up to the par value of their stock, regardless of the amount actually invested.

[5] Congress codified much of the common-law doctrine of ancillary jurisdiction as part of "supplemental jurisdiction" in 28 U. S. C. § 1367.

gory. See *id.*, at 377 (burden rests on party asserting jurisdiction).

A

"[A]ncillary jurisdiction typically involves claims by a defending party haled into court against his will, or by another person whose rights might be irretrievably lost unless he could assert them in an ongoing action in a federal court." *Owen Equipment & Erection Co.* v. *Kroger*, 437 U. S. 365, 376 (1978). Ancillary jurisdiction may extend to claims having a factual and logical dependence on "the primary lawsuit," *ibid.*, but that primary lawsuit must contain an independent basis for federal jurisdiction. The court must have jurisdiction over a case or controversy before it may assert jurisdiction over ancillary claims. See *Mine Workers* v. *Gibbs*, 383 U. S. 715, 725 (1966). In a subsequent lawsuit involving claims with no independent basis for jurisdiction, a federal court lacks the threshold jurisdictional power that exists when ancillary claims are asserted in the same proceeding as the claims conferring federal jurisdiction. See *Kokkonen*, *supra*, at 380–381; *H. C. Cook Co.* v. *Beecher*, 217 U. S. 497, 498–499 (1910). Consequently, claims alleged to be factually interdependent with and, hence, ancillary to claims brought in an earlier federal lawsuit will not support federal jurisdiction over a subsequent lawsuit. The basis of the doctrine of ancillary jurisdiction is the practical need "to protect legal rights or effectively to resolve an entire, logically entwined lawsuit." *Kroger*, 437 U. S., at 377. But once judgment was entered in the original ERISA suit, the ability to resolve simultaneously factually intertwined issues vanished. As in *Kroger*, "neither the convenience of litigants nor considerations of judicial economy" can justify the extension of ancillary jurisdiction over Thomas' claims in this subsequent proceeding. *Ibid.*

In any event, there is insufficient factual dependence between the claims raised in Thomas' first and second suits to justify the extension of ancillary jurisdiction. Thomas'

factual allegations in this suit are independent from those asserted in the ERISA suit, which involved Peacock's and Tru-Tech's status as plan fiduciaries and their alleged wrongdoing in the administration of the plan. The facts relevant to this complaint are limited to allegations that Peacock shielded Tru-Tech's assets from the ERISA judgment long after Tru-Tech's plan had been terminated. The claims in these cases have little or no factual or logical interdependence, and, under these circumstances, no greater efficiencies would be created by the exercise of federal jurisdiction over them. See *Kokkonen, supra,* at 380.

B

The focus of Thomas' argument is that his suit to extend liability for payment of the ERISA judgment from Tru-Tech to Peacock fell under the District Court's ancillary enforcement jurisdiction. We have reserved the use of ancillary jurisdiction in subsequent proceedings for the exercise of a federal court's inherent power to enforce its judgments. Without jurisdiction to enforce a judgment entered by a federal court, "the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution." *Riggs* v. *Johnson County,* 6 Wall. 166, 187 (1868). In defining that power, we have approved the exercise of ancillary jurisdiction over a broad range of supplementary proceedings involving third parties to assist in the protection and enforcement of federal judgments—including attachment, mandamus, garnishment, and the prejudgment avoidance of fraudulent conveyances. See, *e. g., Mackey* v. *Lanier Collection Agency & Service, Inc.,* 486 U. S., at 834, n. 10 (garnishment); *Swift & Co. Packers* v. *Compania Colombiana Del Caribe, S. A.,* 339 U. S. 684, 690–692 (1950) (prejudgment attachment of property); *Dewey* v. *West Fairmont Gas Coal Co.,* 123 U. S. 329, 332–333 (1887) (prejudgment voidance of fraudulent transfers); *Labette County Comm'rs* v. *United States ex rel. Moulton,* 112 U. S.

217, 221–225 (1884) (mandamus to compel public officials in their official capacity to levy tax to enforce judgment against township); *Krippendorf* v. *Hyde*, 110 U. S. 276, 282–285 (1884) (prejudgment dispute over attached property); *Riggs*, *supra*, at 187–188 (mandamus to compel public officials in their official capacity to levy tax to enforce judgment against county).[6]

Our recognition of these supplementary proceedings has not, however, extended beyond attempts to execute, or to guarantee eventual executability of, a federal judgment. We have never authorized the exercise of ancillary jurisdiction in a subsequent lawsuit to impose an obligation to pay an existing federal judgment on a person not already liable for that judgment. Indeed, we rejected an attempt to do so in *H. C. Cook Co.* v. *Beecher*, 217 U. S. 497 (1910). In *Beecher*, the plaintiff obtained a judgment in federal court against a corporation that had infringed its patent. When the plaintiff could not collect on the judgment, it sued the individual directors of the defendant corporation, alleging that, during the pendency of the original suit, they had au-

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[6]The United States, as *amicus curiae* for Thomas, suggests that the proceeding below was jurisdictionally indistinguishable from *Swift & Co. Packers* v. *Compania Colombiana Del Caribe, S. A.*, 339 U. S. 684 (1950), *Dewey* v. *West Fairmont Gas Coal Co.*, 123 U. S. 329 (1887), *Labette County Comm'rs* v. *United States ex rel. Moulton*, 112 U. S. 217 (1884), and *Riggs* v. *Johnson County*, 6 Wall. 166 (1868), because it was intended merely as a supplemental bill to preserve and force payment of the ERISA judgment by voiding fraudulent transfers of Tru-Tech's assets. Brief for United States as *Amicus Curiae* 9–18. We decline to address this argument, because, even if Thomas could have sought to force payment by mandamus or to void postjudgment transfers, neither Thomas nor the courts below characterized this suit that way. Indeed, Thomas expressly rejects that characterization of his lawsuit. Brief for Respondent 4 ("This action . . . is not one to *collect* a judgment, but one to *establish liability* on the part of the Petitioner") (emphasis in original); see *id.*, at 11. In any event, the United States agrees that the alleged fraudulent transfers totaled no more than $80,000, far less than the judgment actually imposed on Peacock. Brief for United States as *Amicus Curiae* 3.

thorized continuing sales of the infringing product and knowingly permitted the corporation to become insolvent. We agreed with the Circuit Court's characterization of the suit as "an attempt to make the defendants answerable for the judgment already obtained" and affirmed the court's decision that the suit was not "ancillary to the judgment in the former suit." *Id.*, at 498–499. *Beecher* governs this case and persuades us that Thomas' attempt to make Peacock answerable for the ERISA judgment is not ancillary to that judgment.

Labette County Comm'rs and *Riggs* are not to the contrary. In those cases, we permitted a judgment creditor to mandamus county officials to force them to levy a tax for payment of an existing judgment. *Labette County Comm'rs*, *supra*, at 221–225; *Riggs*, *supra*, at 187–188. The order in each case merely required compliance with the existing judgment by the persons with authority to comply. We did not authorize the shifting of liability for payment of the judgment from the judgment debtor to the county officials, as Thomas attempts to do here.

In determining the reach of the federal courts' ancillary jurisdiction, we have cautioned against the exercise of jurisdiction over proceedings that are "'entirely new and original,'" *Krippendorf* v. *Hyde*, *supra*, at 285 (quoting *Minnesota Co.* v. *St. Paul Co.*, 2 Wall. 609, 633 (1865)), or where "the relief [sought is] of a different kind or on a different principle" than that of the prior decree. *Dugas* v. *American Surety Co.*, 300 U. S. 414, 428 (1937). These principles suggest that ancillary jurisdiction could not properly be exercised in this case. This action is founded not only upon different facts than the ERISA suit, but also upon entirely new theories of liability. In this suit, Thomas alleged civil conspiracy and fraudulent transfer of Tru-Tech's assets, but, as we have noted, no substantive ERISA violation. The alleged wrongdoing in this case occurred after the ERISA judgment was entered, and Thomas' claims—civil conspiracy, fraudulent conveyance, and "veil piercing"—all involved new

theories of liability not asserted in the ERISA suit. Other than the existence of the ERISA judgment itself, this suit has little connection to the ERISA case. This is a new action based on theories of relief that did not exist, and could not have existed, at the time the court entered judgment in the ERISA case.

Ancillary enforcement jurisdiction is, at its core, a creature of necessity. See *Kokkonen*, 511 U. S., at 380; *Riggs*, 6 Wall., at 187. When a party has obtained a valid federal judgment, only extraordinary circumstances, if any, can justify ancillary jurisdiction over a subsequent suit like this. To protect and aid the collection of a federal judgment, the Federal Rules of Civil Procedure provide fast and effective mechanisms for execution.[7] In the event a stay is entered pending appeal, the Rules require the district court to ensure that the judgment creditor's position is secured, ordinarily by a supersedeas bond.[8] The Rules cannot guarantee payment of every federal judgment. But as long as they protect a judgment creditor's ability to execute on a judgment, the district court's authority is adequately preserved, and ancillary jurisdiction is not justified over a new lawsuit to impose liability for a judgment on a third party. Contrary to Thomas' suggestion otherwise, we think these procedural safeguards are sufficient to prevent wholesale fraud upon the district courts of the United States.

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[7] Rule 69(a), for instance, permits judgment creditors to use any execution method consistent with the practice and procedure of the State in which the district court sits. Rule 62(a) further protects judgment creditors by permitting execution on a judgment at any time more than 10 days after the judgment is entered.

[8] The district court may only stay execution of the judgment pending the disposition of certain post-trial motions or appeal if the court provides for the security of the judgment creditor. Rule 62(b) (stay pending post-trial motions "on such conditions for the security of the adverse party as are proper"); Rule 62(d) (stay pending appeal "by giving a supersedeas bond").

IV

For these reasons, we hold that the District Court lacked jurisdiction over Thomas' subsequent suit. Accordingly, the judgment of the Court of Appeals is

Reversed.

JUSTICE STEVENS, dissenting.

The conflict between the views of the judges on the Court of Appeals and the District Court, on the one hand, and those of my eight colleagues, on the other, demonstrates that this is not an easy case. I believe its outcome should be determined by a proper application of the principle, first announced by Chief Justice Marshall, that a federal court's jurisdiction "is not exhausted by the rendition of its judgment, but continues until that judgment shall be satisfied." *Wayman* v. *Southard*, 10 Wheat. 1, 23 (1825). In my opinion that jurisdiction encompasses a claim by a judgment creditor that a party in control of the judgment debtor has fraudulently exercised that control to defeat satisfaction of the judgment.

In substance the Court so held in *Riggs* v. *Johnson County*, 6 Wall. 166 (1868), and in *Labette County Comm'rs* v. *United States ex rel. Moulton*, 112 U. S. 217 (1884). In each of those cases a judgment against the county was unsatisfied because the county commissioners refused to levy a tax to raise the funds needed to pay the judgment, and in each this Court held that the federal court had jurisdiction to compel the commissioners to take the action necessary to enable the county to satisfy the judgment. It is true, as the Court notes today, that the "order in each case merely required compliance with the existing judgment by the persons with authority to comply." *Ante*, at 358. But the Court fails to explain why the District Court would not have had jurisdiction to enter a comparable order in this case—one that would have directed petitioner to restore to the judgment

debtor the assets that he allegedly transferred to himself to prevent satisfaction of the judgment.*

It is true that the order that was actually entered against petitioner did more than that—it ordered him to satisfy the original judgment in full, rather than merely to restore the fraudulent transfers. For that reason, I agree that the relief was excessive and should be modified. Nevertheless, the Court's central holding that the District Court had no power to grant any relief against petitioner is inconsistent with *Riggs* and *Labette*.

I am also persuaded that the Court's reliance on *H. C. Cook Co.* v. *Beecher*, 217 U. S. 497 (1910), is misplaced. The theory of the complaint against the directors of the judgment debtor in that case was that they were "joint trespassers," equally liable for the patent infringement. That theory was comparable to the claim against this petitioner that was asserted and rejected in the original ERISA action. It depended on proof that the directors' prejudgment conduct should subject them to the same liability as the judgment debtor. See *id.*,

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*Both the Court of Appeals and the District Court acknowledged that respondent brought this action to preserve the initial Employee Retirement Income Security Act of 1974 (ERISA) judgment. See 39 F. 3d 493, 502 (CA4 1994) (describing action as "an equitable attempt to satisfy a previous judgment entered against a fiduciary"); Civ. Action No. 7:91–3843–21 (D. S. C., June 24, 1992), p. 5, App. to Pet. for Cert. 57a ("[T]he present action is an attempt to satisfy a former judgment properly rendered by the District Court"). Petitioner recognized the same. See Brief for Appellant in No. 92–2524 (CA4), p. 15 ("Plaintiff has . . . consistently characterized this lawsuit as an action for the collection of a judgment"). Although one passage in respondent's brief to this Court suggests that the suit was not a collection action, it is clear that respondent meant only to rebut the notion that the proceeding was wholly independent of the earlier suit. The remainder of the brief confirms the lower courts' understanding of the nature of the action, see Brief for Respondent 17–24, and respondent expressly stated the same at oral argument. See Tr. of Oral Arg. 26–27 (agreeing with the District Court's statement that the action before it was "an attempt to satisfy the former judgment").

at 498. What is at issue now, however, is whether petitioner's postjudgment conduct which frustrated satisfaction of the judgment was subject to the continuing jurisdiction of the court that entered that judgment. To that question *Beecher* does not speak.

In sum, I am persuaded that it is the reasoning in *Riggs* and *Labette*, rather than *Beecher*, that should resolve the jurisdictional issue. Accordingly, I respectfully dissent.

Per Curiam

JONES *v.* ABC–TV ET AL.

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

No. 95–7186. Decided February 26, 1996

When this Court first invoked Rule 39.8 to deny petitioner Jones *in forma pauperis* status in October 1992, he had filed over 25 petitions in the Court, all of which were patently frivolous and had been denied without recorded dissent. Since then, this Court has invoked Rule 39.8 five times to deny him *in forma pauperis* status.

Held: For the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, Jones is denied leave to proceed *in forma pauperis* in the instant case, and the Clerk is directed not to accept any further petitions for certiorari from him in noncriminal matters unless he pays the required docketing fee and submits his petition in compliance with this Court's Rule 33.1. This order will not prevent Jones from petitioning to challenge criminal sanctions which might be imposed against him, but it will allow this Court to devote its limited resources to the claims of petitioners who have not abused the certiorari process.

Motion denied.

PER CURIAM.

Pro se petitioner Sylvester Jones requests leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request pursuant to Rule 39.8. Jones is allowed until March 18, 1996, within which to pay the docketing fee required by Rule 38 and to submit his petition in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari from Jones in noncriminal matters unless he pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule 33.1.

Jones has abused this Court's certiorari process. In October 1992, we first invoked Rule 39.8 to deny Jones *in forma pauperis* status in two petitions for certiorari. See *Jones* v. *Wright*, 506 U. S. 810; *In re Jones*, 506 U. S. 810. At that time, Jones had filed over 25 petitions in this Court, all of which were patently frivolous and had been denied without

recorded dissent. And since October 1992, we have invoked Rule 39.8 five times to deny Jones *in forma pauperis* status. See *Jones* v. *Schulze*, 513 U. S. 805 (1994); *In re Jones*, 510 U. S. 963 (1993); *Jones* v. *Jackson*, 510 U. S. 808 (1993); *Jones* v. *Suter*, 508 U. S. 949 (1993); *Jones* v. *Jackson*, 506 U. S. 1047 (1993). Currently, Jones has at least two more petitions for certiorari pending.

We enter the order barring prospective filings for the reasons discussed in *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992). Jones' abuse of the writ of certiorari has been in noncriminal cases and so we limit our sanction accordingly. The order will not prevent Jones from petitioning to challenge criminal sanctions which might be imposed against him. The order will, however, allow this Court to devote its limited resources to the claims of petitioners who have not abused our certiorari process.

It is so ordered.

JUSTICE BREYER took no part in the consideration or decision of this motion.

JUSTICE STEVENS, dissenting.

For the reasons I have previously expressed, I respectfully dissent. See *Attwood* v. *Singletary*, *ante*, p. 298 (STEVENS, J., dissenting); *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1, 4 (1992) (STEVENS, J., dissenting); *Zatko* v. *California*, 502 U. S. 16, 18 (1991) (STEVENS, J., dissenting).

UNITED STATES *v.* MAINE ET AL. (MASSACHUSETTS BOUNDARY CASE)

ON MOTION FOR ENTRY OF SUPPLEMENTAL DECREE

No. 35, Orig. Decided March 17, 1975—Decree entered October 6, 1975—Supplemental decree entered June 15, 1981—Decided February 19, 1985—Supplemental decree entered April 29, 1985—Decided February 25, 1986—Supplemental decree entered February 26, 1996

Supplemental decree entered.

Opinion reported: 420 U. S. 515; decree reported: 423 U. S. 1; supplemental decree reported: 452 U. S. 429; opinion reported: 469 U. S. 504; supplemental decree reported: 471 U. S. 375; opinion reported: 475 U. S. 89.

The joint motion for entry of a supplemental decree is granted.

SUPPLEMENTAL DECREE

The Court having, by its decision of February 25, 1986, adopted the recommendation of its Special Master that Vineyard Sound constitutes historic inland waters and overruled the exception of Massachusetts to the Report of its Special Master herein insofar as it challenged the Master's determination that the whole of Nantucket Sound does not constitute historic or ancient inland waters, and having, to this extent, adopted the Master's recommendations and confirmed his Report:

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. For the purposes of the Court's Decree herein dated October 6, 1975, 423 U. S. 1 (affirming the title of the United States to the seabed more than three geographic miles seaward of the coastline, and of the States to the seabed within the three geographic mile zone), the coastline of the Commonwealth of Massachusetts shall be determined on the basis that the whole of Vineyard Sound constitutes state inland waters and Nantucket Sound (with the exception of

interior indentations which are described in paragraphs 2(c), (d) and (e) below) is made up of territorial seas and high seas.

2. For purposes of said Decree of October 6, 1975, the coastline of Massachusetts includes the following straight lines:

(a) A line from a point on Gay Head on Martha's Vineyard (approximately 41°21′10″N, 70°50′07″W) to the southwestern point of Cuttyhunk Island (approximately 41°24′39″N, 70°56′34″W);

(b) A line from a point on East Chop (approximately 41°28′15″N, 70°34′05″W) to a point on Cape Cod (approximately 41°33′10″N, 70°29′30″W);

(c) A line from a point southeast of East Chop (approximately 41°27′30″N, 70°33′18″W) to a point west of Cape Pogue (approximately 41°25′06″N, 70°27′56″W) on the island of Martha's Vineyard;

(d) A line from a point on Point Gammon on Cape Cod (approximately 41°36′36″N, 70°15′40″W) to the southwestern-most point of Monomoy Island (approximately 41°33′02″N, 70°00′59″W); and

(e) A line from a point on the west coast of Great Island (approximately 41°37′08″N, 70°16′15″W) to a point on Hyannis Point on Cape Cod (approximately 41°37′27″N, 70°17′34″W).

3. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as from time to time may be deemed necessary or advisable to effectuate and supplement the decree and the rights of the respective parties.

JUSTICE SOUTER took no part in the consideration or decision of this motion and supplemental decree.

Syllabus

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD., ET AL. *v.* EPSTEIN ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 94–1809. Argued November 27, 1995—Decided February 27, 1996

A tender offer resulting in petitioner Matsushita Electric Industrial Co.'s acquisition of MCA, Inc., a Delaware corporation, precipitated two lawsuits on behalf of MCA's stockholders. While the first, a Delaware class action based purely on state-law claims, was pending, the second suit was filed in a California federal court, alleging that Matsushita's tender offer violated certain Securities and Exchange Commission Rules promulgated under the Securities Exchange Act of 1934 (Exchange Act). Section 27 of that Act confers exclusive jurisdiction upon the federal courts in such suits. Matsushita prevailed in the federal case, and while that judgment was on appeal, the parties to the state action reached a settlement, agreeing, *inter alia*, that class members who did not opt out of the class would waive all claims in connection with the tender offer, including those asserted in the California federal action. The Chancery Court approved the agreement, and the Delaware Supreme Court affirmed. Respondents are members of both the state and federal classes who did not opt out of the settlement class. In the instant case, the Ninth Circuit found that the Delaware judgment was not a bar to further prosecution of the federal action under the Full Faith and Credit Act, 28 U. S. C. § 1738, and fashioned a test limiting the preclusive force of a state-court settlement judgment to those claims that could "have been extinguished by the issue preclusive effect of an adjudication of the state claims."

Held: The Delaware settlement judgment is entitled to full faith and credit, notwithstanding the fact that it released claims within the exclusive jurisdiction of the federal courts. Pp. 373–387.

(a) Section 1738—which directs federal courts to treat a state-court judgment with the same respect that it would receive in the rendering State's courts—is generally applicable in cases in which the state-court judgment incorporates a class-action settlement releasing claims solely within the federal courts' jurisdiction. The judgment of a state court in a class action is plainly the product of a "judicial proceeding" within the meaning of § 1738, and the fact that the judgment might bar litigation of exclusively federal claims does not necessarily make § 1738 inap-

plicable, *Marrese* v. *American Academy of Orthopaedic Surgeons*, 470 U. S. 373, 380. Pp. 373–375.

(b) *Marrese* provides the analytical framework for deciding whether the Delaware judgment precludes this exclusively federal action. A federal court must first determine whether the rendering State's law indicates that the claim would be barred from litigation in a court of that State; if so, the federal court must decide whether, as an exception to § 1738, it should refuse to give preclusive effect to the state-court judgment. P. 375.

(c) Delaware Supreme Court cases have provided rules regarding the preclusive force of class-action settlement agreements in subsequent state-court suits and have also spoken to the effect of such judgments in federal court, indicating that when the Chancery Court approves a global release of claims, its settlement judgment will preclude ongoing or future federal-court litigation of any released claims. Thus, it appears that a Delaware court would give this settlement judgment preclusive effect in a subsequent proceeding, notwithstanding the fact that respondents could not have pressed their Exchange Act claims in the Chancery Court. The release in the judgment specifically refers to this lawsuit, the state courts found the settlement fair and the class notice adequate, and respondents acknowledge that they did not opt out of the class. Pp. 375–379.

(d) Because it appears that the judgment would be res judicata under Delaware law, this Court must proceed to the second step of the *Marrese* analysis and ask whether § 27 of the Exchange Act partially repealed § 1738. Any such modification must be implied, but this Court has seldom, if ever, held that a federal statute impliedly repealed § 1738. There is no suggestion in § 27 that Congress meant to contravene the common-law rules of preclusion or to repeal § 1738's express statutory requirement. Nor does § 27 evince any intent to prevent a state-court litigant from voluntarily releasing Exchange Act claims in judicially approved settlements. Assuming that § 27 is intended to serve at least the general purposes of achieving greater uniformity of construction and more effective and expert application of the Exchange Act, a state court threatens neither purpose when it upholds a settlement releasing Exchange Act claims. In addition, other provisions of the Exchange Act suggest that Congress did not intend to create an exception to § 1738 for suits alleging violations of the Act, and precedent supports the conclusion that the concerns underlying the grant of exclusive jurisdiction in § 27 are not undermined by state-court approval of settlements releasing Exchange Act claims. Even when exclusively federal claims are at stake, there is no universal right to litigate such claims in federal court. See, *e. g.*, *Allen* v. *McCurry*, 449 U. S. 90, 105. Pp. 380–386.

(e) The subject-matter jurisdiction exception to full faith and credit, relied on by the Ninth Circuit in this case, is inapposite here, where the rendering court had subject-matter jurisdiction over the underlying suit and the defendants. Pp. 386–387.

50 F. 3d 644, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, and BREYER, JJ., joined, and in which STEVENS, J., joined as to Parts I, II–A, and II–C. STEVENS, J., filed an opinion concurring in part and dissenting in part, *post*, p. 387. GINSBURG, J., filed an opinion concurring in part and dissenting in part, in which STEVENS, J., joined, and in which SOUTER, J., joined as to Part II–B, *post*, p. 388.

Barry R. Ostrager argued the cause for petitioners. With him on the briefs was *Geoffrey C. Hazard, Jr.*

Henry Paul Monaghan argued the cause for respondents. With him on the brief were *Harold Edgar, Roger W. Kirby,* and *Irving Malchman.**

JUSTICE THOMAS delivered the opinion of the Court.

This case presents the question whether a federal court may withhold full faith and credit from a state-court judgment approving a class-action settlement simply because the settlement releases claims within the exclusive jurisdiction of the federal courts. The answer is no. Absent a partial repeal of the Full Faith and Credit Act, 28 U. S. C. § 1738, by another federal statute, a federal court must give the judgment the same effect that it would have in the courts of the State in which it was rendered.

I

In 1990, petitioner Matsushita Electric Industrial Co. made a tender offer for the common stock of MCA, Inc., a

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**Daniel J. Popeo* and *Richard A. Samp* filed a brief for the Washington Legal Foundation et al. as *amici curiae* urging reversal.

Thaddeus Holt filed a brief for C. L. Grimes as *amicus curiae* urging affirmance.

Delaware corporation. The tender offer not only resulted in Matsushita's acquisition of MCA, but also precipitated two lawsuits on behalf of the holders of MCA's common stock. First, a class action was filed in the Delaware Court of Chancery against MCA and its directors for breach of fiduciary duty in failing to maximize shareholder value. The complaint was later amended to state additional claims against MCA's directors for, *inter alia*, waste of corporate assets by exposing MCA to liability under the federal securities laws. In addition, Matsushita was added as a defendant and was accused of conspiring with MCA's directors to violate Delaware law. The Delaware suit was based purely on state-law claims.

While the state class action was pending, the instant suit was filed in Federal District Court in California. The complaint named Matsushita as a defendant and alleged that Matsushita's tender offer violated Securities and Exchange Commission (SEC) Rules 10b–13 and 14d–10.[1] These Rules were created by the SEC pursuant to the 1968 Williams Act Amendments to the Securities Exchange Act of 1934 (Exchange Act), 48 Stat. 881, as amended, 15 U. S. C. § 78a *et seq.* Section 27 of the Exchange Act confers exclusive jurisdiction upon the federal courts for suits brought to enforce the Act or rules and regulations promulgated thereunder. See 15 U. S. C. § 78aa. The District Court declined to certify the class, entered summary judgment for Matsushita, and dismissed the case. The plaintiffs appealed to the Court of Appeals for the Ninth Circuit.

After the federal plaintiffs filed their notice of appeal but before the Ninth Circuit handed down a decision, the parties

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[1] We express no opinion in this case on the existence of a private cause of action under §§ 14(d)(6) and (7) of the Securities Exchange Act of 1934, 15 U. S. C. §§ 78n(d)(6) and (7), the statutory authority for Rule 14d–10.

to the Delaware suit negotiated a settlement.[2] In exchange for a global release of all claims arising out of the Matsushita-MCA acquisition, the defendants would deposit $2 million into a settlement fund to be distributed pro rata to the members of the class. As required by Delaware Chancery Rule 23, which is modeled on Federal Rule of Civil Procedure 23, the Chancery Court certified the class for purposes of settlement and approved a notice of the proposed settlement. The notice informed the class members of their right to request exclusion from the settlement class and to appear and present argument at a scheduled hearing to determine the fairness of the settlement. In particular, the notice stated that "[b]y filing a valid Request for Exclusion, a member of the Settlement Class will not be precluded by the Settlement from individually seeking to pursue the claims alleged in the . . . California Federal Actions, . . . or any other claim relating to the events at issue in the Delaware Actions." App. to Pet. for Cert. 96a. Two such notices were mailed to the class members and the notice was also published in the national edition of the Wall Street Journal. The Chancery Court then held a hearing. After argument from several objectors, the court found the class representation adequate and the settlement fair.

The order and final judgment of the Chancery Court incorporated the terms of the settlement agreement, providing:

> "All claims, rights and causes of action (state or federal, including but not limited to claims arising under the federal securities law, any rules or regulations promulgated thereunder, or otherwise), whether known or unknown that are, could have been or might in the future be asserted by any of the plaintiffs or any member of the Settlement Class *(other than those who have val-*

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[2] A previous settlement was rejected by the Court of Chancery as unfair to the class. See *In re MCA, Inc. Shareholders Litigation*, 598 A. 2d 687 (1991).

> *idly requested exclusion therefrom*), . . . in connection with or that arise now or hereafter out of the Merger Agreement, the Tender Offer, the Distribution Agreement, the Capital Contribution Agreement, the employee compensation arrangements, the Tender Agreements, the Initial Proposed Settlement, this Settlement . . . *and including without limitation the claims asserted in the California Federal Actions* . . . are hereby compromised, settled, released and discharged with prejudice by virtue of the proceedings herein and this Order and Final Judgment." *In re MCA, Inc. Shareholders Litigation*, C. A. No. 11740 (Feb. 22, 1993), reprinted in App. to Pet. for Cert. 74a–75a (emphasis added).

The judgment also stated that the notice met all the requirements of due process. The Delaware Supreme Court affirmed. *In re MCA, Inc., Shareholders Litigation*, 633 A. 2d 370 (1993) (judgt. order).

Respondents were members of both the state and federal plaintiff classes. Following issuance of the notice of proposed settlement of the Delaware litigation, respondents neither opted out of the settlement class nor appeared at the hearing to contest the settlement or the representation of the class. On appeal in the Ninth Circuit, petitioner Matsushita invoked the Delaware judgment as a bar to further prosecution of that action under the Full Faith and Credit Act, 28 U. S. C. § 1738.

The Ninth Circuit rejected petitioner's argument, ruling that § 1738 did not apply. *Epstein* v. *MCA, Inc.*, 50 F. 3d 644, 661–666 (1995). Instead, the Court of Appeals fashioned a test under which the preclusive force of a state-court settlement judgment is limited to those claims that "could . . . have been extinguished by the issue preclusive effect of an adjudication of the state claims." *Id.*, at 665. The lower courts have taken varying approaches to determining the preclusive effect of a state-court judgment, entered in a class

or derivative action, that provides for the release of exclusively federal claims.[3] We granted certiorari to clarify this important area of federal law. 515 U. S. 1187 (1995).

II

The Full Faith and Credit Act mandates that the "judicial proceedings" of any State "shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken." 28 U. S. C. § 1738. The Act thus directs all courts to treat a state-court judgment with the same respect that it would receive in the courts of the rendering State. Federal courts may not "employ their own rules . . . in determining the effect of state judgments," but must "accept the rules chosen by the State from which the judgment is taken." *Kremer* v. *Chemical Constr. Corp.*, 456 U. S. 461, 481–482 (1982). Because the Court of Appeals failed to follow the dictates of the Act, we reverse.

A

The state-court judgment in this case differs in two respects from the judgments that we have previously considered in our cases under the Full Faith and Credit Act. As respondents and the Court of Appeals stressed, the judgment was the product of a class action and incorporated a settlement agreement releasing claims within the exclusive jurisdiction of the federal courts. Though respondents urge "the irrelevance of section 1738 to this litigation," Brief for Respondents 25, we do not think that either of these features exempts the judgment from the operation of § 1738.

That the judgment at issue is the result of a class action, rather than a suit brought by an individual, does not under-

[3] Compare the decision below with *Grimes* v. *Vitalink Communications Corp.*, 17 F. 3d 1553 (CA3), cert. denied, 513 U. S. 986 (1994); *Nottingham Partners* v. *Trans-Lux Corp.*, 925 F. 2d 29 (CA1 1991); and *Abramson* v. *Pennwood Investment Corp.*, 392 F. 2d 759 (CA2 1968).

mine the initial applicability of § 1738. The judgment of a state court in a class action is plainly the product of a "judicial proceeding" within the meaning of § 1738. Cf. *McDonald* v. *West Branch*, 466 U. S. 284, 287–288 (1984) (holding that § 1738 does not apply to arbitration awards because arbitration is not a "judicial proceeding"). Therefore, a judgment entered in a class action, like any other judgment entered in a state judicial proceeding, is presumptively entitled to full faith and credit under the express terms of the Act.

Further, § 1738 is not irrelevant simply because the judgment in question might work to bar the litigation of exclusively federal claims. Our decision in *Marrese* v. *American Academy of Orthopaedic Surgeons*, 470 U. S. 373 (1985), made clear that where § 1738 is raised as a defense in a subsequent suit, the fact that an allegedly precluded "claim is within the exclusive jurisdiction of the federal courts *does not necessarily make § 1738 inapplicable.*" *Id.*, at 380 (emphasis added). In so holding, we relied primarily on *Kremer* v. *Chemical Constr. Corp.*, *supra*, which held, without deciding whether claims under Title VII of the Civil Rights Act of 1964 are exclusively federal, that state-court proceedings may be issue preclusive in Title VII suits in federal court. *Kremer*, we said, "implies that absent an exception to § 1738, state law determines at least the . . . preclusive effect of a prior state judgment in a subsequent action involving a claim within the exclusive jurisdiction of the federal courts." *Marrese*, 470 U. S., at 381. Accordingly, we decided that "a state court judgment may in some circumstances have preclusive effect in a subsequent action within the exclusive jurisdiction of the federal courts." *Id.*, at 380.

In *Marrese*, we discussed *Nash County Bd. of Ed.* v. *Biltmore Co.*, 640 F. 2d 484 (CA4), cert. denied, 454 U. S. 878 (1981), a case that concerned a state-court settlement judgment. In *Nash*, the question was whether the judgment, which approved the settlement of state antitrust claims, prevented the litigation of exclusively federal antitrust claims.

See 470 U. S., at 382, n. 2. We suggested that the approach outlined in *Marrese* would also apply in cases like *Nash* that involve judgments upon settlement: that is, § 1738 would control at the outset. See 470 U. S., at 382, n. 2. In accord with these precedents, we conclude that § 1738 is generally applicable in cases in which the state-court judgment at issue incorporates a class-action settlement releasing claims solely within the jurisdiction of the federal courts.

B

Marrese provides the analytical framework for deciding whether the Delaware court's judgment precludes this exclusively federal action. When faced with a state-court judgment relating to an exclusively federal claim, a federal court must first look to the law of the rendering State to ascertain the effect of the judgment. See *id.*, at 381–382. If state law indicates that the particular claim or issue would be barred from litigation in a court of that State, then the federal court must next decide whether, "as an exception to § 1738," it "should refuse to give preclusive effect to [the] state court judgment." *Id.*, at 383. See also *Migra* v. *Warren City School Dist. Bd. of Ed.*, 465 U. S. 75, 81 (1984) ("[I]n the absence of federal law modifying the operation of § 1738, the preclusive effect in federal court of [a] state-court judgment is determined by [state] law").

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We observed in *Marrese* that the inquiry into state law would not always yield a direct answer. Usually, "a state court will not have occasion to address the specific question whether a state judgment has issue or claim preclusive effect in a later action that can be brought only in federal court." 470 U. S., at 381–382. Where a judicially approved settlement is under consideration, a federal court may consequently find guidance from general state law on the preclusive force of settlement judgments. See, *e. g.*, *id.*, at

382–383, n. 2 (observing in connection with *Nash* that "[North Carolina] law gives preclusive effect to consent judgment[s]"). Here, in addition to providing rules regarding the preclusive force of class-action settlement judgments in subsequent suits in state court, the Delaware courts have also spoken to the particular effect of such judgments in federal court.

Delaware has traditionally treated the impact of settlement judgments on subsequent litigation in state court as a question of claim preclusion. Early cases suggested that Delaware courts would not afford claim preclusive effect to a settlement releasing claims that could not have been presented in the trial court. See *Ezzes* v. *Ackerman*, 234 A. 2d 444, 445–446 (Del. 1967) ("[A] judgment entered either after trial on the merits or upon an approved settlement is *res judicata* and bars subsequent suit on the same claim . . . . [T]he defense of *res judicata* . . . is available if the pleadings framing the issues in the first action would have permitted the raising of the issue sought to be raised in the second action, and if the facts were known, or could have been known to the plaintiff in the second action at the time of the first action"). As the Court of Chancery has perceived, however, "the *Ezzes* inquiry [was] modified in regard to class actions," *In re Union Square Associates Securities Litigation*, C. A. No. 11028, 1993 WL 220528, *3 (June 16, 1993), by the Delaware Supreme Court's decision in *Nottingham Partners* v. *Dana*, 564 A. 2d 1089 (1989).

In *Nottingham*, a class action, the Delaware Supreme Court approved a settlement that released claims then pending in federal court. In approving that settlement, the *Nottingham* court appears to have eliminated the *Ezzes* requirement that the claims could have been raised in the suit that produced the settlement, at least with respect to class actions:

> "'[I]n order to achieve a comprehensive settlement that would prevent relitigation of settled questions at the

> core of a class action, a court may permit the release of a claim based on the identical factual predicate as that underlying the claims in the settled class action even though the claim was not presented and might not have been presentable in the class action.'" 564 A. 2d, at 1106 (quoting *TBK Partners, Ltd.* v. *Western Union Corp.*, 675 F. 2d 456, 460 (CA2 1982)).

See *Union Square, supra,* at *3 (relying directly on *Nottingham* to hold that a Delaware court judgment settling a class action was res judicata and barred arbitration of duplicative claims that could not have been brought in the first suit). These cases indicate that even if, as here, a claim could not have been raised in the court that rendered the settlement judgment in a class action, a Delaware court would still find that the judgment bars subsequent pursuit of the claim.

The Delaware Supreme Court has further manifested its understanding that when the Court of Chancery approves a global release of claims, its settlement judgment should preclude ongoing or future federal-court litigation of any released claims. In *Nottingham,* the Court stated that "[t]he validity of executing a general release in conjunction with the termination of litigation has long been recognized by the Delaware courts. More specifically, the Court of Chancery has a history of approving settlements that have implicitly or explicitly included a general release, which would also release federal claims." 564 A. 2d, at 1105 (citation omitted). Though the Delaware Supreme Court correctly recognized in *Nottingham* that it lacked actual authority to order the dismissal of any case pending in federal court, it asserted that state-court approval of the settlement would have the collateral effect of preventing class members from prosecuting their claims in federal court. Perhaps the clearest statement of the Delaware Chancery Court's view on this matter was articulated in the suit preceding this one: "When a state court settlement of a class action releases all claims which arise out of the challenged transaction and is determined to

be fair and to have met all due process requirements, the class members are bound by the release or the doctrine of issue preclusion. Class members cannot subsequently relitigate the claims barred by the settlement in a federal court." *In re MCA, Inc. Shareholders Litigation*, 598 A. 2d 687, 691 (1991).[4] We are aware of no Delaware case that suggests otherwise.

Given these statements of Delaware law, we think that a Delaware court would afford preclusive effect to the settlement judgment in this case, notwithstanding the fact that respondents could not have pressed their Exchange Act claims in the Court of Chancery. The claims are clearly within the scope of the release in the judgment, since the judgment specifically refers to this lawsuit. As required by Delaware Court of Chancery Rule 23, see *Prezant* v. *De Angelis*, 636 A. 2d 915, 920 (1994), the Court of Chancery found, and the Delaware Supreme Court affirmed, that the settlement was "fair, reasonable and adequate and in the best interests of the . . . Settlement class" and that notice to the class was "in full compliance with . . . the requirements of due process." *In re MCA, Inc. Shareholders Litigation*, C. A. No. 11740 (Feb. 22, 1993), reprinted in App. to Pet. for Cert. 73a, 74a. Cf. *Phillips Petroleum Co.* v. *Shutts*, 472 U. S. 797, 812 (1985) (due process for class-action plaintiffs requires "notice plus an opportunity to be heard and participate in the litigation"). The Court of Chancery "further determined that the plaintiffs[,] . . . as representatives of the Settlement Class, have fairly and adequately protected the

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[4] In fact, the Chancery Court rejected the first settlement, which contained no opt-out provision, as unfair to the class precisely because it believed that the settlement would preclude the class from pursuing their exclusively federal claims in federal court. See *In re MCA, Inc. Shareholders Litigation*, 598 A. 2d, at 692 ("[I]f this Court provides for the release of all the claims arising out of the challenged transaction, the claims which the Objectors have asserted in the federal suit will likely be forever barred").

interests of the Settlement Class." *In re MCA, Inc. Shareholders Litigation, supra*, reprinted in App. to Pet. for Cert. 73a. Cf. *Phillips Petroleum Co., supra*, at 812 (due process requires that "the named plaintiff at all times adequately represent the interests of the absent class members").[5] Under Delaware Rule 23, as under Federal Rule of Civil Procedure 23, "[a]ll members of the class, whether of a plaintiff or a defendant class, are bound by the judgment entered in the action unless, in a Rule 23(b)(3) action, they make a timely election for exclusion." 2 H. Newberg, Class Actions § 2755, p. 1224 (1977). See also *Cooper* v. *Federal Reserve Bank of Richmond*, 467 U. S. 867, 874 (1984) ("There is of course no dispute that under elementary principles of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation"). Respondents do not deny that, as shareholders of MCA's common stock, they were part of the plaintiff class and that they never opted out; they are bound, then, by the judgment.[6]

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[5] Apart from any discussion of Delaware law, respondents contend that the settlement proceedings did not satisfy due process because the class was inadequately represented. See Brief for Respondents 34–45. Respondents make this claim in spite of the Chancery Court's express ruling, following argument on the issue, that the class representatives fairly and adequately protected the interests of the class. Cf. *Prezant* v. *De Angelis*, 636 A. 2d 915, 923 (Del. 1994) ("[The] constitutional requirement [of adequacy of representation] is embodied in [Delaware] Rule 23(a)(4), which requires that the named plaintiff 'fairly and adequately protect the interests of the class'"). We need not address the due process claim, however, because it is outside the scope of the question presented in this Court. See *Yee* v. *Escondido*, 503 U. S. 519, 533 (1992). While it is true that a respondent may defend a judgment on alternative grounds, we generally do not address arguments that were not the basis for the decision below. See *Peralta* v. *Heights Medical Center, Inc.*, 485 U. S. 80, 86 (1988).

[6] Respondents argue that their failure to opt out of the settlement class does not constitute consent to the terms of the settlement under traditional contract principles. Brief for Respondents 16–25. Again, the issue raised by respondents—whether the settlement could bar this suit

Because it appears that the settlement judgment would be res judicata under Delaware law, we proceed to the second step of the *Marrese* analysis and ask whether § 27 of the Exchange Act, which confers exclusive jurisdiction upon the federal courts for suits arising under the Act, partially repealed § 1738. Section 27 contains no express language regarding its relationship with § 1738 or the preclusive effect of related state-court proceedings. Thus, any modification of § 1738 by § 27 must be implied. In deciding whether § 27 impliedly created an exception to § 1738, the "general question is whether the concerns underlying a particular grant of exclusive jurisdiction justify a finding of an implied partial repeal of § 1738." *Marrese*, 470 U. S., at 386. "Resolution of this question will depend on the particular federal statute as well as the nature of the claim or issue involved in the subsequent federal action. . . . [T]he primary consideration must be the intent of Congress." *Ibid.*

As a historical matter, we have seldom, if ever, held that a federal statute impliedly repealed § 1738. See *Parsons Steel, Inc.* v. *First Alabama Bank*, 474 U. S. 518, 523–525 (1986) (Anti-Injunction Act does not limit § 1738); *Migra* v. *Warren City School Dist. Bd. of Ed.*, 465 U. S., at 83–85 (42 U. S. C. § 1983 does not limit claim preclusion under § 1738); *Kremer* v. *Chemical Constr. Corp.*, 456 U. S., at 468–476 (Title VII of the Civil Rights Act of 1964 does not limit § 1738); *Allen* v. *McCurry*, 449 U. S. 90, 96–105 (1980) (§ 1983 does not limit issue preclusion under § 1738). But cf. *Brown* v. *Felsen*, 442 U. S. 127, 138–139 (1979) (declining to give claim preclusive

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as a matter of contract law, as distinguished from § 1738 law—is outside the scope of the question on which we granted certiorari. We note, however, that if a State chooses to approach the preclusive effect of a judgment embodying the terms of a settlement agreement as a question of pure contract law, a federal court must adhere to that approach under § 1738. *Kremer* v. *Chemical Constr. Corp.*, 456 U. S. 461, 481–482 (1982).

effect to prior state-court debt collection proceeding in federal bankruptcy suit, without discussing § 1738, state law, or implied repeals). The rarity with which we have discovered implied repeals is due to the relatively stringent standard for such findings, namely, that there be an "'irreconcilable conflict'" between the two federal statutes at issue. *Kremer* v. *Chemical Constr. Corp., supra,* at 468 (quoting *Radzanower* v. *Touche Ross & Co.*, 426 U. S. 148, 154 (1976)).

Section 27 provides that "[t]he district courts of the United States . . . shall have exclusive jurisdiction . . . of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder." 15 U. S. C. § 78aa. There is no suggestion in § 27 that Congress meant for plaintiffs with Exchange Act claims to have more than one day in court to challenge the legality of a securities transaction. Though the statute plainly mandates that suits alleging violations of the Exchange Act may be maintained only in federal court, nothing in the language of § 27 "remotely expresses any congressional intent to contravene the common-law rules of preclusion or to repeal the express statutory requirements of . . . 28 U. S. C. § 1738." *Allen* v. *McCurry, supra,* at 97–98.

Nor does § 27 evince any intent to prevent litigants in state court—whether suing as individuals or as part of a class—from voluntarily releasing Exchange Act claims in judicially approved settlements. While § 27 prohibits state courts from adjudicating claims arising under the Exchange Act, it does not prohibit state courts from approving the release of Exchange Act claims in the settlement of suits over which they have properly exercised jurisdiction, *i. e.*, suits arising under state law or under federal law for which there is concurrent jurisdiction. In this case, for example, the Delaware action was not "brought to enforce" any rights or obligations under the Act. The Delaware court asserted judicial power

over a complaint asserting purely state-law causes of action[7] and, after the parties agreed to settle, certified the class and approved the settlement pursuant to the requirements of Delaware Rule of Chancery 23 and the Due Process Clause. Thus, the Delaware court never trespassed upon the exclusive territory of the federal courts, but merely approved the settlement of a common-law suit pursuant to state and nonexclusive federal law. See *Abramson* v. *Pennwood Investment Corp.*, 392 F. 2d 759, 762 (CA2 1968) ("Although the state court could not adjudicate the federal claim, it was within its powers over the corporation and the parties to approve the release of that claim as a condition of settlement of the state action"). While it is true that the state court assessed the general worth of the federal claims in determining the fairness of the settlement, such assessment does not amount to a judgment on the merits of the claims. See *TBK Partners, Ltd.* v. *Western Union Corp.*, 675 F. 2d 456, 461 (CA2 1982) ("'Approval of a settlement does not call for findings of fact regarding the claims to be compromised. The court is concerned only with the *likelihood* of success or failure; the actual merits of the controversy are not to be determined'") (quoting Haudek, The Settlement and Dismissal of Stockholders' Actions-Part II: The Settlement, 23 Sw. L. J. 765, 809 (1969) (footnotes omitted)). The Delaware court never purported to resolve the merits of the Exchange Act claims in the course of appraising the settlement; indeed, it expressly disavowed that purpose. See *In re MCA, Inc. Shareholders Litigation*, C. A. No. 11740 (Feb. 16, 1993), reprinted in App. to Pet. for Cert. 68a ("In determining whether a settlement should be approved, a court should not try the merits of the underlying claims. This principle would seem to be especially appropriate where the under-

[7] Though the plaintiff class premised one of its claims of fiduciary breach on the allegation that MCA wasted corporate assets by exposing the corporation to liability under the federal securities laws, the cause pleaded was nonetheless a state common-law action for breach of fiduciary duty.

lying claims, like the federal claims here, are outside the jurisdiction of this Court" (citation omitted)).

The legislative history of the Exchange Act elucidates no specific purpose on the part of Congress in enacting § 27. See *Murphy* v. *Gallagher*, 761 F. 2d 878, 885 (CA2 1985) (noting that the legislative history of the Exchange Act provides no readily apparent explanation for the provision of exclusive jurisdiction in § 27) (citing 2 & 3 L. Loss, Securities Regulation 997, 2005 (2d ed. 1961)). We may presume, however, that Congress intended § 27 to serve at least the general purposes underlying most grants of exclusive jurisdiction: "to achieve greater uniformity of construction and more effective and expert application of that law." *Murphy* v. *Gallagher*, *supra*, at 885. When a state court upholds a settlement that releases claims under the Exchange Act, it threatens neither of these policies. There is no danger that state-court judges who are not fully expert in federal securities law will say definitively what the Exchange Act means and enforce legal liabilities and duties thereunder. And the uniform construction of the Act is unaffected by a state court's approval of a proposed settlement because the state court does not adjudicate the Exchange Act claims but only evaluates the overall fairness of the settlement, generally by applying its own business judgment to the facts of the case. See, *e. g.*, *Polk* v. *Good*, 507 A. 2d 531, 535 (Del. 1986).

Furthermore, other provisions of the Exchange Act suggest that Congress did not intend to create an exception to § 1738 for suits alleging violations of the Act. Congress plainly contemplated the possibility of dual litigation in state and federal courts relating to securities transactions. See 15 U. S. C. § 78bb(a) (preserving "all other rights and remedies that may exist at law or in equity"). And all that Congress chose to say about the consequences of such litigation is that plaintiffs ought not obtain double recovery. See *ibid.* Congress said nothing to modify the background rule that where a state-court judgment precedes that of a federal

court, the federal court must give full faith and credit to the state-court judgment. See *Murphy* v. *Gallagher*, *supra*, at 884.

Finally, precedent supports the conclusion that the concerns underlying the grant of exclusive jurisdiction in § 27 are not undermined by state-court approval of settlements releasing Exchange Act claims. We have held that state-court proceedings may, in various ways, subsequently affect the litigation of exclusively federal claims without running afoul of the federal jurisdictional grant in question. In *Becher* v. *Contoure Laboratories, Inc.*, 279 U. S. 388 (1929) (cited in *Marrese*, 470 U. S., at 381), we held that state-court findings of fact were issue preclusive in federal patent suits. We did so with full recognition that "the logical conclusion from the establishing of [the state law] claim is that Becher's patent is void." 279 U. S., at 391. *Becher* reasoned that although "decrees validating or invalidating patents belong to the Courts of the United States," that "does not give sacrosanctity to facts that may be conclusive upon the question in issue." *Ibid.* Similarly, while binding legal determinations of rights and liabilities under the Exchange Act are for federal courts only, there is nothing sacred about the approval of settlements of suits arising under state law, even where the parties agree to release exclusively federal claims. See also *Brown* v. *Felsen*, 442 U. S., at 139, n. 10 (noting that "[i]f, in the course of adjudicating a state-law question, a state court should determine factual issues using standards identical to those of § 17, then collateral estoppel, in the absence of countervailing statutory policy, would bar relitigation of those issues in the bankruptcy court"); *Pratt* v. *Paris Gas Light & Coke Co.*, 168 U. S. 255, 258 (1897) (when a state court has jurisdiction of the parties and the subject matter of the complaint, the state court may decide the validity of a patent when that issue is raised as a defense).

We have also held that Exchange Act claims may be resolved by arbitration rather than litigation in federal court.

In *Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220 (1987), we found that parties to an arbitration agreement could waive the right to have their Exchange Act claims tried in federal court and agree to arbitrate the claims. *Id.*, at 227–228. It follows that state-court litigants ought also to be able to waive, or "release," the right to litigate Exchange Act claims in a federal forum as part of a settlement agreement. As *Shearson/American Express Inc.* demonstrates, a statute conferring exclusive federal jurisdiction for a certain class of claims does not necessarily require resolution of those claims in a federal court.

Taken together, these cases stand for the general proposition that even when exclusively federal claims are at stake, there is no "universal right to litigate a federal claim in a federal district court." *Allen* v. *McCurry*, 449 U. S., at 105. If class-action plaintiffs wish to preserve absolutely their right to litigate exclusively federal claims in federal court, they should either opt out of the settlement class or object to the release of any exclusively federal claims. In fact, some of the plaintiffs in the Delaware class action requested exclusion from the settlement class. They are now proceeding in federal court with their federal claims, unimpeded by the Delaware judgment.

In the end, §§ 27 and 1738 "do not pose an either-or proposition." *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253 (1992). They can be reconciled by reading § 1738 to mandate full faith and credit of state-court judgments incorporating global settlements, provided the rendering court had jurisdiction over the underlying suit itself, and by reading § 27 to prohibit state courts from exercising jurisdiction over suits arising under the Exchange Act. Cf. 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4470, pp. 688–689 (1981) ("[S]ettlement of state court litigation has been held to defeat a subsequent federal action if the settlement was intended to apply to claims in exclusive federal jurisdiction as well as other claims. . . . These rulings

are surely correct"). Congress' intent to provide an exclusive federal forum for adjudication of suits to enforce the Exchange Act is clear enough. But we can find no suggestion in § 27 that Congress meant to override the "principles of comity and repose embodied in § 1738," *Kremer* v. *Chemical Constr. Corp.*, 456 U. S., at 463, by allowing plaintiffs with Exchange Act claims to release those claims in state court and then litigate them in federal court. We conclude that the Delaware courts would give the settlement judgment preclusive effect in a subsequent proceeding and, further, that § 27 did not effect a partial repeal of § 1738.

C

The Court of Appeals did not engage in any analysis of Delaware law pursuant to § 1738. Rather, the Court of Appeals declined to apply § 1738 on the ground that where the rendering forum lacked jurisdiction over the subject matter or the parties, full faith and credit is not required. 50 F. 3d, at 661, 666. See *Underwriters Nat. Assurance Co.* v. *North Carolina Life & Accident & Health Ins. Guaranty Assn.*, 455 U. S. 691, 704–705 (1982) ("'[A] judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment'") (quoting *Durfee* v. *Duke*, 375 U. S. 106, 110 (1963)). The Court of Appeals decided that the subject-matter jurisdiction exception to full faith and credit applies to this case because the Delaware court acted outside the bounds of its own jurisdiction in approving the settlement, since the settlement released exclusively federal claims. See 50 F. 3d, at 661–662, and n. 25.

As explained above, the state court in this case clearly possessed jurisdiction over the subject matter of the underlying suit and over the defendants. Only if this were not so—for instance, if the complaint alleged violations of the Exchange Act and the Delaware court rendered a judgment

on the merits of those claims—would the exception to § 1738 for lack of subject-matter jurisdiction apply. Where, as here, the rendering court in fact had subject-matter jurisdiction, the subject-matter-jurisdiction exception to full faith and credit is simply inapposite. In such a case, the relevance of a federal statute that provides for exclusive federal jurisdiction is not to the state court's possession of jurisdiction *per se*, but to the existence of a partial repeal of § 1738.[8]

* * *

The judgment of the Court of Appeals is reversed, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.

JUSTICE STEVENS, concurring in part and dissenting in part.

While I join Parts I, II–A, and II–C of the Court's opinion, and while I also agree with the Court's reasons for concluding that § 27 of the Securities Exchange Act of 1934 does not create an implied partial repeal of the Full Faith and Credit Act, I join neither Part II–B nor the Court's judgment because I agree with JUSTICE GINSBURG that the question of Delaware law should be addressed by the Court of Appeals in the first instance, and that the Ninth Circuit remains free to consider whether Delaware courts fully and fairly litigated the adequacy of class representation.

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[8] *Kalb* v. *Feuerstein*, 308 U. S. 433 (1940), is not to the contrary. In that case, the federal statute at issue expressly prohibited certain common-law actions from being either instituted or maintained in state court. *Id.*, at 440–441. Thus, by merely entertaining a common-law foreclosure suit, over which it otherwise would have had jurisdiction, the state court violated the terms of the Act. That is not the situation here, where there is no contention that just by entertaining the class action the Delaware court acted in violation of federal law.

JUSTICE GINSBURG, with whom JUSTICE STEVENS joins, and with whom JUSTICE SOUTER joins as to Part II–B, concurring in part and dissenting in part.

I join the Court's judgment to the extent that it remands the case to the Ninth Circuit. I agree that a remand is in order because the Court of Appeals did not attend to this Court's reading of 28 U. S. C. § 1738 in a controlling decision, *Kremer* v. *Chemical Constr. Corp.*, 456 U. S. 461 (1982). But I would not endeavor, as the Court does, to speak the first word on the content of Delaware preclusion law. Instead, I would follow our standard practice of remitting that issue for decision, in the first instance, by the lower federal courts. See, *e. g.*, *Marrese* v. *American Academy of Orthopaedic Surgeons*, 470 U. S. 373, 387 (1985).

I write separately to emphasize a point key to the application of § 1738: A state-court judgment generally is not entitled to full faith and credit unless it satisfies the requirements of the Fourteenth Amendment's Due Process Clause. See *Kremer*, 456 U. S., at 482–483. In the class-action setting, adequate representation is among the due process ingredients that must be supplied if the judgment is to bind absent class members. See *Phillips Petroleum Co.* v. *Shutts*, 472 U. S. 797, 808, 812 (1985); *Prezant* v. *De Angelis*, 636 A. 2d 915, 923–924 (Del. 1994).

Suitors in this action (called the "Epstein plaintiffs" in this opinion), respondents here, argued before the Ninth Circuit, and again before this Court, that they cannot be bound by the Delaware settlement because they were not adequately represented by the Delaware class representatives. They contend that the Delaware representatives' willingness to release federal securities claims within the exclusive jurisdiction of the federal courts for a meager return to the class members, but a solid fee to the Delaware class attorneys, disserved the interests of the class, particularly, the absentees. The inadequacy of representation was apparent, the Epstein plaintiffs maintained, for at the time of the settle-

ment, the federal claims were *sub judice* in the proper forum for those claims—the federal judiciary. Although the Ninth Circuit decided the case without reaching the due process check on the full faith and credit obligation, that inquiry remains open for consideration on remand. See *ante*, at 379, n. 5 (due process "w[as] not the basis for the decision below," so the Court "need not address [it]").

I

Matsushita's acquisition of MCA prompted litigation in state and federal courts. A brief account of that litigation will facilitate comprehension of the Epstein plaintiffs' position. On September 26, 1990, in response to reports in the financial press that Matsushita was negotiating to buy MCA, a suit was filed in the Court of Chancery of Delaware, a purported class action on behalf of the stockholders of MCA. Naming MCA and its directors (but not Matsushita) as defendants, the complaint invoked state law only. It alleged that MCA's directors had failed to carry out a market check to maximize shareholder value upon a change in corporate control, a check required by *Revlon, Inc.* v. *MacAndrews & Forbes Holdings, Inc.*, 506 A. 2d 173, 182 (Del. 1986). For this alleged breach of fiduciary duty, the complaint sought, *inter alia*, an injunction against Matsushita's proposed acquisition of MCA.

Matsushita announced its tender offer on November 26, 1990. It offered holders of MCA common stock $71 per share, if they tendered their shares before December 29, 1990. The owners of 91% of MCA's common stock tendered their shares and, on January 3, 1991, for a price of $6.1 billion, Matsushita acquired MCA.

On December 3, 1990, a few days after the required Securities and Exchange Commission (SEC) filings disclosed the terms of the tender offer, several MCA shareholders filed suit in the United States District Court for the Central Dis-

trict of California.[1] Based solely on federal law, their complaints alleged that Matsushita, first named defendant, violated SEC Rules 14d–10, 17 CFR §240.14d–10 (1994), and 10b–13, *id.*, §240.10b–13, by offering preferential treatment in the tender offer to MCA principals Lew Wasserman and Sidney Sheinberg. As stated in the complaint, the public tender offer included a special tax-driven stock swap arrangement for Wasserman, then MCA's chairman and chief executive officer, and a $21 million bonus for Sheinberg, then MCA's chief operating officer and owner of 1,170,000 shares of MCA common stock. These arrangements allegedly violated, *inter alia*, the SEC's "all-holder best-price" rule (Rule 14d–10), which requires bidders to treat all shareholders on equal terms. The claims of federal securities law violations fell within the exclusive jurisdiction of the federal court. See 15 U. S. C. §78aa. The Epstein plaintiffs also sought class certification to represent all MCA shareholders at the time of the tender offer.

Two days later, counsel in the Delaware action advised MCA's counsel that the Delaware plaintiffs intended to amend their complaint to include additional claims against MCA and its directors and to add Matsushita as a defendant. The additional claims alleged that MCA wasted corporate assets by increasing the corporation's exposure to liability for violation of Rules 10b–13 and 14d–10, that MCA failed to

[1] Two sets of plaintiffs filed complaints in the Central District of California: the Epstein plaintiffs (including Lawrence Epstein, John Linder, Jane Rockford, Maurice Karlin, Ruth Karlin, Beth Karlin, and Bert Karlin) sued both individually and on behalf of all MCA shareholders at the time of the tender offer; Walter Minton brought suit in his individual capacity. All had tendered their shares for the $71 tender price. The District Court consolidated the two cases. Minton and, it appears, Rockford opted out of the Delaware class-action settlement. Matsushita does not contest the qualification of Minton and Rockford, as individuals, to pursue federal claims unimpeded by the settlement in Delaware. See Brief for Petitioners ii. Matsushita does contest any class-action initiative in federal court.

make full disclosure of the benefits MCA insiders would receive from the takeover, and that directors Wasserman and Sheinberg breached their fiduciary duties by negotiating preferential deals with Matsushita. Matsushita, the amended complaint alleged, had conspired with and aided and abetted MCA directors in violation of Delaware law.

Within days, the Delaware parties agreed to a settlement and, on December 17, 1990, submitted their proposal to the Delaware Vice Chancellor. The agreement provided for a modification of a "poison pill" in the corporate charter of an MCA subsidiary,[2] and for a fees payment of $1 million to the class counsel. The settlement agreement required the release of all claims, state and federal, arising out of the tender offer.

The Vice Chancellor rejected the settlement agreement on April 22, 1991, for two reasons: the absence of any monetary benefit to the class members; and the potential value of the federal claims that the agreement proposed to release. The "generous payment" of $1 million in counsel fees, the Vice Chancellor observed, "confer[red] no benefit on the members of the Class." *In re MCA, Inc. Shareholders Litigation*, 598 A. 2d 687, 695 (Del. Ch. 1991). And the value of the revised poison pill to the class, the Vice Chancellor said, was "illusionary[,] . . . apparently . . . proposed merely to justify a settlement which offers no real monetary benefit to the Class." *Id.*, at 696. The Vice Chancellor described the state-law claims as "at best, extremely weak and, therefore, [of] little or no value." *Id.*, at 694. "[T]he only claims which have any substantial merit," he said, "are the claims . . . in the California federal suit that were not asserted in this Delaware action." *Id.*, at 696. After the rejection of

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[2] The subsidiary in question was spun off from MCA during the merger because it owned a television station that federal law prohibited Matsushita from acquiring. The $71 tender offer price included $5 worth of stock in this new corporation.

the settlement, the Delaware lawsuit lay dormant for more than a year.

The federal litigation proceeded. In various rulings, the District Court denied the federal plaintiffs' motion for partial summary judgment, denied the Epstein plaintiffs' motion for class certification, and granted Matsushita's motion for summary judgment dismissing the claims. On April 15, 1992, the District Court entered its final judgment, which the Epstein plaintiffs appealed to the Ninth Circuit.

On October 22, 1992, after the federal plaintiffs had filed their notice of appeal, the Delaware parties reached a second settlement agreement. Matsushita agreed to create a $2 million settlement fund that would afford shareholders 2 to 3 cents per share before payment of fees and costs. The Delaware class counsel requested $691,000 in fees. In return for this relief, the Delaware plaintiffs agreed to release "all claims, rights and causes of action (state or federal, including but not limited to claims arising under the federal securities laws, and any rules or regulations promulgated thereunder, or otherwise) . . . in connection with or that arise now or hereafter out of the [tender offer] . . . including without limitation the claims asserted in the California Federal Actions . . . ." App. 187–188. Unlike the first settlement proposal, the second agreement included an opt-out provision.

This time the Vice Chancellor approved the settlement. He stated: "[I]t is in the best interests of the class to settle this litigation and the terms of the settlement are fair and reasonable—although the value of the benefit to the class is meager." *In re MCA, Inc. Shareholders Litigation*, C. A. No. 11740, 1993 WL 43024, *1 (Del. Ch., Feb. 16, 1993). He found the class members' recovery of 2 to 3 cents per share "adequate (if only barely so) to support the proposed settlement." *Id.*, at *4. The federal claims, he reasoned, having been dismissed by the District Court, "now have minimal economic value." *Ibid.* And he gave weight to the pres-

ence in the second settlement agreement of an opt-out provision. *Ibid.*

Addressing the objectors' contention that the proposed settlement was "collusive," the Vice Chancellor recalled that "the settling parties ha[d] previously proposed a patently inadequate settlement," and he agreed that "suspicions abound." *Id.*, at *5. Nevertheless, he noted, the "[o]bjectors have offered no evidence of any collusion," so he declined to reject the settlement on that ground. *Ibid.* Reducing the counsel fees from the requested $691,000 to $250,000, the Vice Chancellor offered this observation: "[T]he defendants' willingness to create the settlement fund seems likely to have been motivated as much by their concern as to their potential liability under the federal claims as by their concern for liability under the state law claims which this Court characterized as 'extremely weak.'" *Id.*, at *6. In a brief order, the Delaware Supreme Court affirmed "on the basis of and for the reasons assigned by the Court of Chancery . . . ." *In re MCA, Inc. Shareholders Litigation*, C. A. No. 126,1993, 1993 WL 385041, *1 (Sept. 21, 1993), judgt. order reported at 633 A. 2d 370.

Before the Ninth Circuit, Matsushita argued that the Delaware class-action settlement barred litigation of the federal claims raised in the Epstein action. The Ninth Circuit disagreed. Relying on Federal Circuit Court decisions,[3] the Court of Appeals held that state courts lack plenary power to approve settlements that effectively extinguish exclusively federal claims. Only if federal and state claims rest on the "identical factual predicate," the Ninth Circuit concluded, could a state-court settlement subsume an exclusively federal claim. It was not enough, in the Ninth Circuit's view, that the discrete federal and state claims stem from the

[3] Closest in point, the court said, were *Grimes* v. *Vitalink Communications Corp.*, 17 F. 3d 1553 (CA3 1994), and *Nottingham Partners* v. *Trans-Lux Corp.*, 925 F. 2d 29 (CA1 1991). See *Epstein* v. *MCA, Inc.*, 50 F. 3d 644, 662 (CA9 1995).

"same transaction," the test Matsushita urged. 50 F. 3d, at 661–665. The federal securities claims did not turn on the same operative facts as the state claims pleaded in Delaware, the Ninth Circuit found; accordingly, the federal claims could not have been extinguished by the issue-preclusive effect of an adjudication of the state claims. This analysis led the Ninth Circuit to declare that the Delaware decree "exceed[ed] the jurisdiction of the state court and, therefore, is not entitled to full faith and credit." *Id.*, at 666.

On the merits, the Ninth Circuit held, first, that a private right of action could be maintained to redress Rule 14d–10 violations. *Id.*, at 652. The court next held that Matsushita violated Rule 14d–10 by paying Wasserman consideration not offered to other shareholders, *id.*, at 657; reversing the District Court's disposition of this matter, the Ninth Circuit held that plaintiffs were entitled to summary judgment on liability and remanded for a determination of damages, *ibid.* Regarding plaintiffs' claim that the $21 million payment to Sheinberg violated Rule 14d–10, the Ninth Circuit vacated the summary judgment for Matsushita and remanded for a determination whether the payment was in fact made to encourage Sheinberg to tender his shares. *Id.*, at 659.

II

A

Section 1738's full faith and credit instruction, as the Court indicates, requires the forum asked to recognize a judgment first to determine the preclusive effect the judgment would have in the rendering court. See *Kremer*, 456 U. S., at 466; *Marrese*, 470 U. S., at 381. Because the Ninth Circuit did not evaluate the preclusive effect of the Delaware judgment through the lens of that State's preclusion law, I would remand for that determination. See *id.*, at 386–387; *Migra* v. *Warren City School Dist. Bd. of Ed.*, 465 U. S. 75, 87 (1984) ("Prudence . . . dictates that it is the District Court, in the

first instance, not this Court, that should interpret Ohio preclusion law and apply it.").[4]

B

Every State's law on the preclusiveness of judgments is pervasively affected by the supreme law of the land. To be valid in the rendition forum, and entitled to recognition nationally, a state court's judgment must measure up to the requirements of the Fourteenth Amendment's Due Process Clause. *Kremer*, 456 U. S., at 482–483. "A State may not grant preclusive effect in its own courts to a constitutionally infirm judgment, and other state and federal courts are not required to accord full faith and credit to such a judgment." *Id.*, at 482 (footnote omitted).

In *Phillips Petroleum Co.* v. *Shutts*, this Court listed minimal procedural due process requirements a class-action money judgment must meet if it is to bind absentees; those requirements include notice, an opportunity to be heard, a right to opt out, and adequate representation. 472 U. S., at 812. "[T]he Due Process Clause of course requires that the named plaintiff at all times adequately represent the interests of the absent class members." *Ibid.* (citing *Hansberry* v. *Lee*, 311 U. S. 32, 42–43, 45 (1940)). As the *Shutts* Court's phrase "at all times" indicates, the class representative's duty to represent absent class members adequately is a continuing one. 472 U. S., at 812; see also *Gonzales* v. *Cassidy*, 474 F. 2d 67, 75 (CA5 1973) (representative's failure to pursue an appeal rendered initially adequate class representation inadequate, so that judgment did not bind the class).

Although emphasizing the constitutional significance of the adequate representation requirement, this Court has recog-

[4] In its endeavor to forecast Delaware preclusion law, the Court appears to have blended the "identical factual predicate" test applied by the Delaware Supreme Court in *Nottingham Partners* v. *Dana*, 564 A. 2d 1089, 1106–1107 (1989), with the broader "same transaction" test advanced by Matsushita. See *ante*, at 376–378.

nized the first line responsibility of the States themselves for assuring that the constitutional essentials are met. See *Hansberry*, 311 U. S., at 42.[5] Final judgments, however, remain vulnerable to collateral attack for failure to satisfy the adequate representation requirement. See *id.*, at 40, 42; see also Restatement (Second) of Judgments §§ 42(d) and (e), Comments *e* and *f*, pp. 406, 410–412 (1982) (noting, *inter alia*, that judgment is not binding on purportedly represented person where, to the knowledge of the opposing party, the representative seeks to advance his own interest at the expense of the represented person); see also *id.*, § 41, Comment *a*, p. 394 (if § 42 circumstances exist, "the represented person may avoid being bound *either* by appearing in the action before rendition of the judgment *or* by attacking the judgment by subsequent proceedings"). (Emphasis added.) A court conducting an action cannot predetermine the res judicata effect of the judgment; that effect can be tested only in a subsequent action. See 7B C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 1789, p. 245 (2d ed. 1986).

In Delaware, the constitutional due process requirement of adequate representation is embodied in Delaware Court of Chancery's Rule 23, a class-action rule modeled on its federal counterpart. *Prezant*, 636 A. 2d, at 923, 920. Delaware requires, as a prerequisite to class certification, that the named

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[5] Many States, including Delaware, have class-action rules corresponding to Federal Rule of Civil Procedure 23, a rule ranking adequacy of representation as a prerequisite to maintaining a class action. See 3 H. Newberg & A. Conte, Newberg on Class Actions, App. 13–1 (3d ed. 1992) (listing 39 States and the District of Columbia with rules comparable to the amended Federal Rule of Civil Procedure 23); Fed. Rule Civ. Proc. 23(a)(4) (representatives may sue on behalf of the class only if "the representative parties will fairly and adequately protect the interests of the class"); see also *General Telephone Co. of Southwest* v. *Falcon*, 457 U. S. 147, 157–158, n. 13 (1982) (Federal Rule of Civil Procedure 23(a)(4)'s adequate representation requirement "raises concerns about the competency of class counsel and conflicts of interest," in addition to the question whether the representative shares the interests of the class members).

plaintiffs "fairly and adequately protect the interests of the class." Del. Ch. Rule 23(a)(4). In *Prezant*, the Delaware Supreme Court considered whether adequate class representation was "a *sine qua non* for approval of a class action settlement," and concluded that it was. 636 A. 2d, at 920, 926. The state high court overturned a judgment and remanded a settlement because the Court of Chancery had failed to make an explicit finding of adequate representation. *Id.*, at 926.

The Delaware Supreme Court underscored that due process demands more than notice and an opportunity to opt out; adequate representation, too, that court emphasized, is an essential ingredient. *Id.*, at 924 (citing *Phillips Petroleum Co.* v. *Shutts*, 472 U. S., at 812). Notice, the Delaware Supreme Court reasoned, cannot substitute for the thorough examination and informed negotiation an adequate representative would pursue. *Prezant*, 636 A. 2d, at 924. The court also recognized that opt-out rights "are infrequently utilized and usually economically impracticable." *Ibid.*

The Vice Chancellor's evaluation of the merits of the settlement could not bridge the gap, the Delaware Supreme Court said, because an inadequate representative "taint[s]" the entire settlement process. *Id.*, at 925.[6] "[A]n adequate representative," the Delaware Supreme Court explained, "vigorously prosecuting an action without conflict and bargaining at arms-length, may present different facts and a

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[6] In both *Prezant* and the instant case, a temporary settlement class device was used, telescoping the inquiry of adequate representation into the examination of the fairness of the settlement. According to the Delaware Supreme Court, however, this near simultaneity does *not* relieve the representative of her duty to demonstrate, nor the court of its duty to determine, the adequacy of representation. *Prezant*, 636 A. 2d, at 923. In a comprehensive opinion, the Third Circuit reached the same conclusion after examining the temporary class settlement device in the context of Federal Rule of Civil Procedure 23. See *In re General Motors Corp. Pick-up Truck Fuel Tank Products Liability Litigation*, 55 F. 3d 768, 794–800 (1995).

different settlement proposal to the court than would an inadequate representative." *Ibid.* Consequently, the Delaware Supreme Court held, "*in every class action settlement*, the Court of Chancery is required to make an explicit determination on the record of the propriety of the class action according to the requisites of Rule 23(a) and (b)." *Ibid.*

In the instant case, the Epstein plaintiffs challenge the preclusive effect of the Delaware settlement, arguing that the Vice Chancellor never in fact made the constitutionally required determination of adequate representation. See *id.*, at 923.[7] They contend that the state court left unresolved key questions: notably, did the class representatives share substantial common interests with the absent class members, and did counsel in Delaware vigorously press the interests of the class in negotiating the settlement.[8] In particular, the Epstein plaintiffs question whether the Delaware class representatives—who filed the state lawsuit on September 26, 1990, two months before the November 26 tender offer announcement—actually tendered shares in December, thereby enabling them to litigate a Rule 14d–10 claim in federal court. They also suggest that the Delaware representatives undervalued the federal claims—claims they could only settle, but never litigate, in a Delaware court. Finally,

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[7] The Vice Chancellor did not have the benefit of the Delaware Supreme Court's clear statement in *Prezant*, decided one year after this settlement was approved. In *Prezant*, however, the Delaware Supreme Court largely reiterated and applied what this Court had stated almost a decade earlier in *Phillips Petroleum Co.* v. *Shutts*, 472 U. S. 797, 808, 812 (1985). See also 2 R. Balotti & J. Finkelstein, Delaware Law of Corporations and Business Organization § 13.22, p. 13–131, and n. 578 (2d ed. 1996 Supp.).

[8] The order approving the class for settlement purposes, the Epstein plaintiffs urge, contains no discussion of the adequacy of the representatives, see App. 198, and the order and final judgment approving the settlement contains only boilerplate language referring to the adequacy of representation, see *id.*, at 204–205. The Delaware Supreme Court approved the Court of Chancery's judgment in a one paragraph order. See *In re MCA, Inc. Shareholders Litigation*, 633 A. 2d 370 (1993) (judgt. order).

the Epstein plaintiffs contend that the Vice Chancellor improperly shifted the burden of proof;[9] he rejected the Delaware objectors' charges of "collusion" for want of evidence while acknowledging that "suspicions [of collusion] abound." *In re MCA, Inc. Shareholders Litigation*, 1993 WL 43024, at *5.[10]

Mindful that this is a court of final review and not first view, I do not address the merits of the Epstein plaintiffs' contentions, or Matsushita's counterargument that the issue of adequate representation was resolved by full and fair litigation in the Delaware Court of Chancery.[11] These arguments remain open for airing on remand. I stress, however, the centrality of the procedural due process protection of adequate representation in class-action lawsuits, emphatically including those resolved by settlement. See generally J. Coffee, Suspect Settlements in Securities Litigation, N. Y. L. J., March 28, 1991, p. 5, col. 1.

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[9] Delaware law appears to place the burden of proof on the class representatives. See 2 Balotti & Finkelstein, *supra*, at 11, n. 7, § 13–17, p. 13–121 (class representative must prove satisfaction of Del. Ch. Rule 23(a) requirements, including adequacy of representation); see also 7A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 1765, pp. 273–274, and n. 29 (2d ed. 1986); 3B J. Moore, Moore's Federal Practice § 23.02–2 (2d ed. 1995).

[10] In this regard, it is noteworthy that Matsushita did not move to dismiss the Delaware action after the Vice Chancellor, in rejecting the first proposed settlement, surveyed the state-law claims and found them insubstantial. See *In re MCA, Inc. Shareholders Litigation*, 598 A. 2d 687, 694 (Del. Ch. 1991) (Vice Chancellor described "the asserted state law claims" as "at best, extremely weak" and of "little or no value").

[11] Counsel for Matsushita acknowledged that relief from a judgment may be sought in Delaware pursuant to that State's counterpart to Federal Rule of Civil Procedure 60(b). See Tr. of Oral Arg. 51–52; Del. Ch. Rule 60; see also 2 Newberg & Conte, *supra*, at 9, n. 5, §§ 11.27, 11.63 (Federal Rule of Civil Procedure 60(b) provides an avenue to challenge the adequacy of representation in a class settlement).

Syllabus

NORFOLK & WESTERN RAILWAY CO. *v.* HILES

CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, 5TH JUDICIAL DISTRICT

No. 95–6. Argued January 8, 1996—Decided February 27, 1996

Railroad cars are connected by couplers consisting of knuckles—clamps that lock with their mates—joined to the ends of drawbars, which are fastened to housing mechanisms on the cars. Cars automatically couple when they come together and one car's open knuckle engages the other car's closed knuckle. The drawbar pivots in its housing, allowing the knuckled end some lateral play to prevent moving cars from derailing on a curved track. As a consequence of this lateral movement, drawbars may remain off center when cars are uncoupled and must be realigned manually to ensure proper coupling. Respondent Hiles injured his back while attempting to realign an off-center drawbar on a car at one of petitioner Norfolk & Western Railway Company's yards. He sued in Illinois state court, alleging that Norfolk & Western had violated § 2 of the Safety Appliance Act (SAA or Act), which requires that cars be equipped with "couplers coupling automatically by impact, and capable of being uncoupled, without the necessity of individuals going between the ends of the vehicles." The trial court granted Hiles a directed verdict on liability, and the State Appellate Court affirmed.

Held: Section 2 does not make a railroad liable as a matter of law for injuries incurred by a railroad employee while trying to straighten a misaligned drawbar. Pp. 403–414.

(a) Congress passed the SAA in 1893 to promote switchyard safety by requiring the use of standardized automatic couplers. SAA liability may be predicated on the failure of coupling equipment to perform as required by the Act, and the SAA creates an absolute duty requiring not only that automatic couplers be present, but also that they actually perform. See, *e. g.*, *Affolder* v. *New York, C. & St. L. R. Co.*, 339 U. S. 96, 98. Pp. 403–409.

(b) However, failure to couple will not cause a violation if the railroad can show that a coupler has not been properly set to couple on impact. *Affolder, supra,* at 99. *Affolder*'s restriction on failure-to-perform liability logically extends to every step necessary to prepare a nondefective coupler for coupling, including ensuring a drawbar's proper alignment. Thus, the absolute duty is not breached as a matter of law when a drawbar becomes misaligned during the ordinary course of railroad operations. Hiles' interpretation would require a finding that, as a mat-

ter of law, a misaligned drawbar is a malfunctioning drawbar, when, in fact, misalignment occurs as a part of the normal course of railroad car operations. His reading of § 2 would mean that every railroad car for nearly a century has been in violation of the SAA. Also contrary to Hiles' argument, § 2 does not command railroads to develop a mechanism for automatic drawbar realignment. Congress legislated working automatic couplers for employee safety, not employee safety by whatever means a court might deem appropriate. Pp. 409–414.

268 Ill. App. 3d 561, 644 N. E. 2d 508, reversed.

THOMAS, J., delivered the opinion for a unanimous Court.

Carter G. Phillips argued the cause for petitioner. With him on the briefs were *Thomas W. Alvey, Jr.*, *Kurt E. Reitz*, and *Mary Sue Juen*.

Lawrence M. Mann argued the cause for respondent. With him on the brief was *Jeanne Sathre*.*

JUSTICE THOMAS delivered the opinion of the Court.

Before us in this case is the question whether § 2 of the Safety Appliance Act (SAA), 49 U. S. C. § 20302(a)(1)(A), makes a railroad liable as a matter of law for injuries incurred by a railroad employee while trying to straighten a misaligned drawbar. We hold that it does not and, accordingly, reverse the judgment of the Illinois Appellate Court.

I

Railroad cars in a train are connected by couplers located at both ends of each car. A coupler consists of a knuckle joined to the end of a drawbar, which itself is fastened to a housing mechanism on the car. A knuckle is a clamp that interlocks with its mate, just as two cupped hands—placed palms together with the fingertips pointing in opposite direc-

Robert W. Blanchette filed a brief for the Association of American Railroads as *amicus curiae* urging reversal.

Robert B. Thompson, *Patrick J. Harrington*, and *Clinton J. Miller III* filed a brief for the United Transportation Union as *amicus curiae* urging affirmance.

tions—interlock when the fingers are curled.[1] When cars come together, the open knuckle on one car engages a closed knuckle on the other car, automatically coupling the cars. The drawbar extends the knuckle out from the end of the car and is designed to pivot in its housing, allowing the knuckled end some lateral play to prevent moving cars from derailing on a curved track. As a consequence of this lateral movement, drawbars may remain off center when cars are uncoupled. This misalignment, if not corrected, may prevent cars from coupling by allowing the knuckles to pass by each other. To ensure proper coupling, railroad employees must realign drawbars manually.

Respondent William J. Hiles was a member of a switching crew at petitioner Norfolk & Western Railway Company's Luther Yard in St. Louis, Missouri. His duties included coupling and uncoupling railroad cars and aligning drawbars. On July 18, 1990, Hiles injured his back while attempting to realign an off-center drawbar. Hiles sued in Illinois state court, alleging that Norfolk & Western had violated the SAA, which requires that cars be equipped with "couplers coupling automatically by impact, and capable of being uncoupled, without the necessity of individuals going between the ends of the vehicles." 49 U. S. C. § 20302(a)(1)(A). Norfolk & Western argued that the misaligned drawbar did not result from defective equipment. The trial court granted Hiles' motion for directed verdict on liability.

The Illinois Appellate Court affirmed. 268 Ill. App. 3d 561, 644 N. E. 2d 508 (1994). The Illinois Appellate Court recognized a deep split of authority over the proper interpretation of the SAA, but determined that it would not reconsider its "longstanding authority permitting a plaintiff . . . to

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[1] See R. Reinhardt, Workin' on the Railroad 274 (1970) (the automatic coupler style "use[s] the principle of the hooked fingers of the human hand").

recover under the Safety Appliance Act for injuries sustained while attempting to align a misaligned drawbar." *Id.*, at 565, 644 N. E. 2d, at 511. The Illinois Supreme Court denied review, and we granted certiorari, 515 U. S. 1191 (1995), to resolve the conflict among the lower courts.[2]

II

A

For most of the 19th century, the link-and-pin coupler was the standard coupler used to hook together freight cars. It consisted of a tubelike body that received an oblong link. During coupling, a railworker had to stand between the cars as they came together and guide the link into the coupler pocket. Once the cars were joined, the employee inserted a pin into a hole a few inches from the end of the tube to hold the link in place. See J. White, American Railroad Freight Car 490 (1993) (hereinafter White). The link-and-pin coupler, though widely used, ultimately proved unsatisfactory because (i) it made a loose connection between the cars with too much give and play; (ii) there was no standard design and train crews often spent hours trying to match pins and links while coupling cars; (iii) links and pins were frequently lost, resulting in substantial replacement costs; and (iv) crew members had to go between moving cars during coupling and were frequently injured and sometimes killed. *Id.*, at 490–497.

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[2] Compare, *e. g.*, *Kavorkian* v. *CSX Transportation, Inc.*, 33 F. 3d 570 (CA6 1994), *Lisek* v. *Norfolk & Western R. Co.*, 30 F. 3d 823 (CA7 1994), cert. denied, 513 U. S. 1112 (1995), *Goedel* v. *Norfolk & Western R. Co.*, 13 F. 3d 807 (CA4 1994), *Reed* v. *Philadelphia, Bethlehem & New England R. Co.*, 939 F. 2d 128 (CA3 1991), and *Maldonado* v. *Missouri Pacific R. Co.*, 798 F. 2d 764 (CA5 1986), with *Coleman* v. *Burlington Northern, Inc.*, 681 F. 2d 542 (CA8 1982), and *Metcalfe* v. *Atchison, Topeka & Santa Fe R. Co.*, 491 F. 2d 892 (CA10 1974).

In 1873, Eli H. Janney patented a knuckle-style coupler that was to become the standard for the freight car couplers used even today.[3] See Figure 1. The coupler had a bifurcated drawhead and a revolving hook, which, when brought in contact with another coupler, would automatically interlock with its mate.

Figure 1

The Janney coupler had several advantages over link-and-pin couplers. Not only did it alleviate the problem of loose parts that plagued the link-and-pin coupler,[4] it also allowed railworkers to couple and uncouple cars without having to

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[3] Janney was a dry goods clerk and former Confederate Army officer from Alexandria, Virginia, who used his lunch hours to whittle from wood an alternative to the link-and-pin coupler. See F. Wilner, Safety: "A great investment," Railway Age, Mar. 1993, p. 53 (hereinafter Wilner).

[4] Automatic couplers also made possible the use of power air brakes, which had not been successfully used with link-and-pin couplers because of excessive slack in the coupling. See Hearings on S. 811 et al. before the Senate Committee on Interstate Commerce, 52d Cong., 1st Sess. (1892), reprinted in S. Rep. No. 1049, 52d Cong., 1st Sess., 9 (1892) (hereinafter Sen. Hearings).

go between the cars to guide the link and set the pin.[5] One commentator described the automatic coupling operation as follows:

> "While the cars were apart, the brakeman had to make sure the knuckle of the coupler on the waiting car stood in an open position and that the pin had been lifted into its set position. When the opposite coupler was closed and locked in position, the brakeman was able to stand safely out of the way and signal the engineer to move the cars together. When the knuckle of the coupler of the moving car hit the lever arm of the revolving knuckle on the open coupler, it revolved around the locked one, while concurrently the locking pin dropped automatically from its set position into the coupler, locking the knuckle in place. Although the brakeman had to set up the entire situation by hand, the actual locking operation was automatic and did not require the brakeman to stand between the cars." Clark 191.

Though the market was flooded with literally thousands of patented couplers,[6] Janney's design was clearly among the best and slowly achieved recognition in the industry. See *id.*, at 193–201. In 1888, the Master Car Builders Association Executive Committee obtained a limited waiver of patent rights—placing much of Janney's design in the public domain—and adopted the design as its standard. Conversion

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[5] Ezra Miller is generally credited with creating the first semiautomatic coupling device for passenger cars—known as the Miller Hook—but it was never widely used on freight cars. See C. Clark, Development of the Semiautomatic Freight-Car Coupler, 1863–1893, 13 Technology and Culture 170, 180–182 (1972) (hereinafter Clark); White 505–506.

[6] In 1875, there were more than 900 car coupler patents. White 498. By 1887, the number of coupler patents had topped 4,000, *ibid.*, and by 1900, approximately 8,000 coupler patents had been issued. Clark 179.

to the new standard proceeded slowly,[7] partly as a result of the sheer number of competing designs on the market. The lack of standardized couplers itself caused safety problems,[8] and reformers pushed Congress to pass legislation requiring the use of standardized automatic couplers.

In 1893, satisfied that an automatic coupler could meet the demands of commercial railroad operations and, at the same time, be manipulated safely, see Clark 206, Congress passed the SAA. Its success in promoting switchyard safety was stunning. Between 1877 and 1887, approximately 38% of all railworker accidents involved coupling. *Id.*, at 179. That percentage fell as the railroads began to replace link-and-pin couplers with automatic couplers. The descent accelerated during the SAA's 7-year grace period and by 1902, only two years after the SAA's effective date, coupling accidents constituted only 4% of all employee accidents. In absolute numbers, coupler-related accidents dropped from nearly 11,000 in 1892 to just over 2,000 in 1902, even though the number of railroad employees steadily increased during that decade.

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[7] The Pennsylvania Railroad Company, for instance, adopted a policy of putting automatic couplers on all new cars and on every car that went into the shop for repairs. Sen. Hearings, at 27. In 1890, approximately 10% of all freight cars in use in the United States were equipped with automatic couplers and power brakes. Wilner 54. By 1893, approximately 16% of freight cars were so equipped. *Ibid.* Witnesses testifying before the Senate Committee in 1892 placed the figure between 12% and 20%. Sen. Hearings, at 12 (12% of cars fitted with Janney-style couplers); *id.*, at 27, 42 (20% of cars fitted with mutually interchangeable couplers).

[8] The new automatic couplers had design modifications that permitted them to couple with link-and-pin style couplers, but not easily. See Clark 192 ("[T]he knuckle of the Janney was notched in order to allow the opposing link to enter the drawhead to the point of coupling . . . but in practical service it was most difficult to effect"); S. Rep. 1049, 52d Cong., 1st Sess., 5 (1892) ("These representative men, speaking for thousands of their associates, say that what they desire is uniformity, and that the danger of their calling has increased rather than diminished by the introduction of different types of couplers").

EMPLOYEE COUPLING ACCIDENTS, 1892–1902[9]

Year	Railroad Employees	Employee Accidents	Employee Coupler Accidents	Percentage Coupler Accidents
1892	821,415	30,821	10,697	34.71
1893	873,602	34,456	11,710	33.99
1894	779,608	25,245	7,491	29.67
1895	785,034	27,507	8,428	30.64
1896	826,620	31,830	8,686	27.29
1897	823,476	29,360	6,497	22.13
1898	874,558	33,719	5,648	16.75
1899	928,924	37,133	5,477	14.75
1900	1,017,653	42,193	4,198	9.95
1901	1,071,169	43,817	2,966	6.77
1902	1,189,315	53,493	2,256	4.22

B

As originally passed, § 2 of the SAA provided:

> "[I]t shall be unlawful for any . . . common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled[,] without the necessity of men going between the ends of the cars." Act of Mar. 2, 1893, 27 Stat. 531, 45 U. S. C. § 2 (1988 ed.), recodified, as amended, 49 U. S. C. § 20302(a).[10]

The text of § 2 requires that rail cars be equipped with automatic couplers and that all couplers be sufficiently compatible

[9] Clark 207.

[10] In *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1, 18–19 (1904), we clarified that the statute should be read as though there were a comma after the word "uncoupled," so that the words "without the necessity of men going between the ends of the cars" applies to both coupling and uncoupling. When Congress recodified the SAA in 1994, it placed a comma behind the word "uncoupled." See 49 U. S. C. § 20302(a)(1)(A).

so that they will couple on impact. *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1, 16–17 (1904). The railroad is liable for an employee's injury or death caused by a violation of the SAA. See *St. Louis, I. M. & S. R. Co.* v. *Taylor*, 210 U. S. 281, 295 (1908) ("If the railroad . . . use[s] cars which do not comply with the standard, it violates the plain prohibitions of the law, and there arises from that violation the liability to make compensation to one who is injured by it").[11]

Early SAA cases involved injuries that occurred when an employee was forced to go between the cars during coupling operations. See, *e. g.*, *Johnson*, *supra*, at 2 (hand crushed between cars during coupling); *San Antonio & Aransas Pass R. Co.* v. *Wagner*, 241 U. S. 476, 478 (1916) (foot crushed between couplers); *Atlantic City R. Co.* v. *Parker*, 242 U. S. 56, 58 (1916) (arm caught in drawhead between cars during coupling). Our later cases extended the reach of SAA liability beyond injuries occurring between cars during coupling to other injuries caused by the failure of cars to automatically couple. *Affolder* v. *New York, C. & St. L. R. Co.*, 339 U. S. 96, 97 (1950) (railroad employee who ran after a runaway train caused by failure to couple lost a leg when he fell under a car); *Carter* v. *Atlanta & St. Andrews Bay R. Co.*, 338 U. S. 430, 432–433 (1949) (plaintiff successfully boarded runaway cars that failed to couple, but was injured when the cars collided with another train); *O'Donnell* v. *Elgin, J. & E. R. Co.*, 338 U. S. 384, 385–386 (1949) (railworker killed when two runaway cars—the result of a broken coupler—collided with cars whose couplers he was adjusting). Liability in each of these cases was predicated on the failure of coupling equipment to perform as required by the SAA, and we held that the SAA creates an absolute duty requiring not only

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[11] We have held that the Federal Employers' Liability Act (FELA), 45 U. S. C. § 51 *et seq.*, makes railroads liable for a violation of the SAA, see *O'Donnell* v. *Elgin, J. & E. R. Co.*, 338 U. S. 384, 391 (1949), although early cases, like *Johnson*, *supra*, preceded FELA's enactment in 1908. Hiles did not assert a negligence claim under FELA.

that automatic couplers be present, but also that they actually perform. See, *e. g.*, *Affolder, supra,* at 98; *Carter, supra,* at 433–434.

III

Hiles urges that railroads have an absolute duty to outfit their cars with safe equipment and that the SAA is violated if an employee is required to go between the ends of cars to manually adjust a misaligned drawbar. We cannot agree. Hiles correctly points out that failure to perform as required by the SAA is itself an actionable wrong dependent on neither negligence nor proof of a defect,[12] see *Affolder, supra,* at 98–99; *O'Donnell, supra,* at 390, 393, but the absolute duty to which we have referred on numerous occasions is not breached as a matter of law when a drawbar becomes misaligned during the ordinary course of railroad operations.

In *Affolder,* the plaintiff was working with a crew coupling cars. The 25th and 26th cars failed to couple and, after a few more cars were added, the first 25 cars began rolling down a slight incline. The plaintiff ran after the runaway cars in an attempt to board and stop them, but instead fell under a car and lost his leg. At trial, the railroad attempted to prove that the coupler at issue was not defective and that the knuckle on the coupler was closed when the coupling attempt was made. Following *O'Donnell,* we reaffirmed that the failure of equipment to perform as required is sufficient to create SAA liability, *Affolder, supra,* at 99 (quoting *O'Donnell, supra,* at 390), but we noted that failure to couple would not create liability if the coupler was not properly set:

> "Of course [imposition of failure-to-perform liability] assumes that the coupler was placed in a position to operate on impact. Thus, if 'the failure of these two cars to couple on impact was because the coupler on the Penn-

[12] Hiles neither pleaded nor attempted to prove at trial that Norfolk & Western acted negligently or that the drawbar was defective.

> sylvania car had not been properly opened,' the railroad had a good defense." 339 U. S., at 99.[13]

In *Carter*, we similarly conditioned the duty on the coupler's being "properly set." 338 U. S., at 434; see *O'Donnell*, *supra*, at 394, n. 7 (declining to consider "a situation where an adequate coupler failed to hold because it was improperly set").

In *Affolder*, we predicated failure-to-perform liability on placing the coupler "in a position to operate on impact." 339 U. S., at 99. We implicitly recognized that certain preliminary steps, such as ensuring that the knuckle is open, are necessary to proper performance of the coupler and that a failure to couple will not constitute an SAA violation if the railroad can show that the coupler had not been placed in a position to automatically couple. Though *Affolder* involved a claimed closed knuckle, its language was not so limited and, as a matter of common sense, could not have been. Hiles could not reasonably complain that an otherwise working electrical appliance failed to perform if he had neglected to plug in the power cord. Similarly, a court cannot reasonably find as a matter of law that an otherwise nondefective coupler has failed to perform when the drawbar has not been placed "in a position to operate on impact." We think *Affolder*'s restriction on failure-to-perform liability logically extends to every step necessary to prepare a nondefective coupler for coupling, see *supra*, at 404–405 (describing the ordinary process of preparing for an automatic coupling), including ensuring proper alignment of the drawbar.[14]

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[13] Justice Jackson, dissenting on other grounds, agreed: "Before a failure to couple establishes a defective coupler, it must be found that it was properly set so it could couple. If it was not adjusted as such automatic couplers must be, of course the failure is not that of the device." *Affolder*, 339 U. S., at 101.

[14] Our holding that *Affolder*'s restriction on liability extends to misaligned drawbars suggests that, at least in this case, the absence of a failed coupling attempt is of no consequence. On this record, Hiles would not

Hiles contends that the distinction between a closed knuckle and a misaligned drawbar makes a difference because opening a knuckle can be accomplished without going between cars but realigning a drawbar cannot. This is particularly true, Hiles argues, given that Congress' "central policy" in enacting the SAA was to protect the worker by obviating the necessity of going between cars. Brief for Respondent 12–13. We decline to adopt an expansive interpretation of §2 that would prohibit railroad employees from going between cars to realign slued drawbars. The language of §2, which requires couplers that both will couple and can be uncoupled without the necessity of persons going between the cars, does not easily lend itself to Hiles' interpretation. Instead, as even Hiles apparently concedes, see Brief for Respondent 19, the text of §2 only requires railroads to use a particular kind of coupler with certain attributes, and there is no question that Norfolk & Western's cars are equipped with couplers with the necessary functional characteristics.[15]

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have been entitled to judgment as a matter of law even if he had been injured during a failed coupling attempt.

[15] Hiles reads into the legislative history a singular congressional intent to keep railroad workers from going between cars. Our construction of §2 rests on the text of the statute and our prior interpretations of that language. In any event, we think Hiles' reading of the legislative history is erroneous. For instance, Hiles selectively quotes statements made by W. E. Rodgers during Senate Committee hearings to suggest that Congress wanted to force the railroads to adopt a coupler that would keep railworkers out from between cars altogether. Brief for Respondent 14. A full reading of these statements makes clear, however, that Mr. Rodgers believed that adoption of the Janney design, as it then existed, would fully satisfy the requirements of §2. Sen. Hearings, at 14. Hiles' reliance on statements made by H. S. Haines, vice president of the American Railway Association, is similarly misplaced. See Brief for Respondent 15. Mr. Haines evidently thought that 500 existing couplers would satisfy the requirements of the proposed bill. Sen. Hearings, at 41; see Hearings on Automatic Couplers and Power Brakes before the House Committee on Interstate and Foreign Commerce, 52d Cong., 1st Sess., 6 (1892). If Con-

Adopting Hiles' reading of § 2 would require us to hold that a misaligned drawbar, by itself, is a violation of the SAA, and we are quite unwilling to do that. It is true that our failure-to-perform cases made clear that the railroad will be liable for injuries caused by malfunctioning equipment, even when cars are equipped with automatic couplers. But we cannot agree that a misaligned drawbar is, as a matter of law, a malfunctioning drawbar. Historically, misaligned drawbars were an inevitable byproduct of the ability to traverse curved track and, like the closed knuckle in *Affolder*, are part of the normal course of railroad car operations.

We are understandably hesitant to adopt a reading of § 2 that would suggest that almost every railroad car in service for nearly a century has been in violation of the SAA. See *United Transportation Union* v. *Lewis*, 711 F. 2d 233, 251, n. 39 (CADC 1983). Our hesitance is augmented by the enforcement scheme Congress enacted with the SAA. From its beginning, § 6 of the SAA provided that railroads in viola-

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gress had any singular purpose in enacting § 2, it was to require the railroads to equip cars with uniformly compatible automatic couplers that employees could operate without having to go between the cars. See H. R. Rep. No. 1678, 52d Cong., 1st Sess., 3 (1892) ("It is the judgment of this committee that all cars and locomotives should be equipped with automatic couplers, obviating the necessity of the men going between the cars"); S. Rep. No. 1049, *supra* n. 8, at 6 (1892) ("What the railroad employés need to secure greater safety in the performance of their duties is uniformity. They want all couplers alike and perfectly interchangeable"). We think Congress fairly intended to prohibit the practice of placing railworkers between moving cars to guide a link into its matching coupler pocket or, worse, into an unfamiliar coupler cavity. Cf. Hearings on Automatic Couplers and Power Brakes before the House Committee on Interstate and Foreign Commerce, 52d Cong., 1st Sess., 11 (1892) ("He goes in to make a coupling. He does not know the conditions that exist there. He can not tell whether it is a Janney or a Hinson, a Dowling, a Drexel, or some other kind of a drawbar"). Contrary to Hiles' assertion, the legislative history contains no suggestion that Congress intended to prevent an employee from going between cars to ensure that the knuckle is open, that the locking pin is set, see *supra*, at 405, or that the drawbar is aligned.

tion of § 2 were liable for "a penalty of one hundred dollars for each and every such violation." Act of Mar. 2, 1893, 27 Stat. 531, 45 U. S. C. § 6 (1988 ed.), recodified, as amended, 49 U. S. C. § 21302(a). The amount of the penalty for a § 2 violation has varied over the years,[16] but the threat of a penalty has not. Yet Hiles points to not a single instance in which a railroad has been fined for misaligned drawbars. It is not the case that the Government has simply neglected to enforce the penalty provisions of the SAA for nearly 100 years.[17] We think there is a better explanation than that the Government has failed to enforce this particular aspect of the SAA since its inception: A misaligned drawbar simply is not a violation of § 2.[18]

Finally, relying on the railroads' experimental attempts to develop automatic realigning devices, Hiles argues that Congress' clear intent to protect railroad employees in coupling operations required the railroads to "develop a mechanism for automatic realignment of a drawbar." Brief for Respondent 27. Or, in the words of his *amicus*, "[t]he Legislative wisdom of Section 2 is that it is as flexible as technology." Brief for United Transportation Union as *Amicus*

[16] The statute currently requires the Secretary of Transportation to impose a penalty of "at least $500 but not more than $10,000." 49 U. S. C. § 21302(a)(2).

[17] See, *e. g.*, *Chicago, B. & Q. R. Co.* v. *United States*, 220 U. S. 559 (1911) (§ 1 power brake violations); *Alabama Great Southern R. Co.* v. *United States*, 233 F. 2d 520 (CA5 1956) (§ 2 coupler violation); *United States* v. *St. Louis-San Francisco R. Co.*, 271 F. Supp. 212 (WD Mo. 1967) (§ 9 brake violation); *United States* v. *Gulf, M. & O. R. Co.*, 76 F. Supp. 289 (ED La. 1948) (§ 2 coupler violation).

[18] Hiles' view of § 2 also conflicts with regulations promulgated by the Federal Railroad Administration (FRA) that provide for the safety of employees who go between cars to "prepare rail cars for coupling," 49 CFR § 218.22(c)(5) (1994), or to "adjust a coupling device," § 218.39(a). In its proposed rulemaking for § 218.39, the FRA explained that the proposed rule would protect employees who place themselves between cars to couple air hoses or adjust coupling devices, including "adjusting drawbars." 48 Fed. Reg. 45272, 45273 (1983).

Curiae 17. We reject this argument, for we find no such command in the text of § 2. Congress plainly instructed the railroads to install compatible and automatic couplers on all cars, at a time when this basic technology had been in existence for two decades and had received widespread testing and recognition as a feasible technology superior to what was then in primary use. In contrast, Hiles concedes that automatic realignment technology did not even exist in 1893 when Congress passed the SAA, see Brief for Respondent 26–27, and, according to Norfolk & Western, automatic realignment has never been shown to be effective. But this matters not, because Congress legislated working automatic couplers for employee safety, not employee safety by whatever method a court might deem appropriate.

The judgment of the Illinois Appellate Court is

Reversed.

Syllabus

UNITED STATES ET AL. *v.* CHESAPEAKE & POTOMAC TELEPHONE COMPANY OF VIRGINIA ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 94–1893. Argued December 6, 1995—Decided February 27, 1996*

42 F. 3d 181, vacated and remanded.

Deputy Solicitor General Wallace argued the cause for petitioners in both cases. With him on the briefs for petitioners in No. 94–1893 were *Solicitor General Days, Acting Assistant Attorney General Phillips, Paul R. Q. Wolfson, Douglas N. Letter, Mark B. Stern, Bruce G. Forrest, William E. Kennard,* and *Christopher J. Wright. H. Bartow Farr III, Richard G. Taranto, Daniel L. Brenner, Neal M. Goldberg,* and *David L. Nicoll* filed briefs for petitioner in No. 94–1900.

Laurence H. Tribe argued the cause for respondents in both cases. With him on the brief were *Jonathan S. Massey, Peter J. Rubin, Mark L. Evans, Kenneth W. Starr, Paul T. Cappuccio, James R. Young, John Thorne,* and *Michael E. Glover.*†

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*Together with No. 94–1900, *National Cable Television Assn., Inc.* v. *Bell Atlantic Corp. et al.*, also on certiorari to the same court.

†Briefs of *amici curiae* urging reversal were filed for the California Cable Television Association by *Bruce D. Sokler* and *Frank W. Lloyd III;* and for the Consumer Federation of America et al. by *Gigi B. Sohn* and *Andrew Jay Schwartzman.*

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Burt Neuborne* and *Steven R. Shapiro;* for BellSouth Corp. by *Walter H. Alford, John F. Beasley, William Barfield,* and *Roger M. Flynt, Jr.;* for East Ascension Telephone Co. by *Richard A. Epstein;* for GTE Corp. by *M. Edward Whelan III, John F. Raposa,* and *Richard A. Cordray;* for Mets Fans United/Virginia Consumers for Cable Choice et al. by *Samuel A. Simon;* for the United States Telephone Association et al. by *Michael W. McConnell* and *Kenneth S. Geller;* and for U S

PER CURIAM.

The judgment is vacated and the cases are remanded to the United States Court of Appeals for the Fourth Circuit for consideration of the question whether they are moot.

West, Inc., by *Lloyd N. Cutler, Louis R. Cohen, William T. Lake,* and *Stuart S. Gunckel.*

Syllabus

HERCULES, INC. ET AL. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 94–818. Argued October 30, 1995—Decided March 4, 1996

Petitioner chemical manufacturers produced the defoliant Agent Orange under contracts with the Federal Government during the Vietnam era. After they incurred substantial costs defending, and then settling, tort claims by veterans alleging physical injury from the use of Agent Orange, petitioners filed suits under the Tucker Act to recover such costs from the Government on alternative theories of contractual indemnification and warranty of specifications provided by the Government. The Claims Court granted summary judgment against them and dismissed the complaints. The Court of Appeals consolidated the cases and affirmed.

Held: Petitioners may not recover on their warranty-of-specifications and contractual-indemnification claims. Pp. 422–430.

(a) The Tucker Act's grant of jurisdiction to the Claims Court to hear and determine claims against the Government that are founded upon any "express or implied" contract with the United States, 28 U. S. C. § 1491(a), extends only to contracts either express or implied in fact, not to claims on contracts implied in law, see, *e. g.*, *Sutton* v. *United States*, 256 U. S. 575, 581. Because the contracts at issue do not contain express warranty or indemnification provisions, petitioners must establish that, based on the circumstances at the time of contracting, there was an implied agreement between the parties to provide the undertakings that petitioners allege. Pp. 422–424.

(b) Neither an implied contractual warranty of specifications nor *United States* v. *Spearin*, 248 U. S. 132, the seminal case recognizing a cause of action for breach of such a warranty, extends so far as to render the United States responsible for costs incurred in defending and settling the veterans' tort claims. Where, as here, the Government provides specifications directing how a contract is to be performed, it is logical to infer that the Government warrants that the contractor will be able to perform the contract satisfactorily if it follows the specifications. However, this inference does not support a further inference that would extend the warranty beyond performance to third-party claims against the contractor. Thus, the *Spearin* claims made by petitioners do not extend to postperformance third-party costs as a matter of law. Pp. 424–425.

Syllabus

(c) Although the Government required petitioner Wm. T. Thompson Co. to produce Agent Orange under authority of the Defense Production Act of 1950 (DPA) and threat of civil and criminal fines, imposed detailed specifications, had superior knowledge of the hazards, and, to a measurable extent, seized Thompson's processing facilities, these conditions do not give rise to an implied-in-fact agreement to indemnify Thompson for losses to third parties. The Anti-Deficiency Act, which bars federal employees from entering into contracts for future payment of money in advance of, or in excess of, an existing appropriation, 31 U. S. C. § 1341, must be viewed as strong evidence that a contracting officer would not have provided, in fact, the contractual indemnification Thompson claims. And, the detailed statutes and regulations that enable such contracting officers to provide indemnity agreements to certain contractors show that implied agreements to indemnify should not be readily inferred. Also contrary to Thompson's argument, the DPA provision specifying that "[n]o person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a[n] . . . order issued pursuant to this Act," 50 U. S. C. App. § 2157, does not reveal an intent to indemnify contractors. Likewise, since Thompson claims a breach of warranty by its customer rather than its seller and supplier, it misplaces its reliance on *Ryan Stevedoring Co.* v. *Pan-Atlantic S. S. Corp.*, 350 U. S. 124. Finally, petitioners' equitable appeal to "simple fairness" is considerably weakened by the fact that the injured veterans could not recover from the Government, see *Feres* v. *United States*, 340 U. S. 135, and, in any event, may not be entertained by this Court, see *United States* v. *Minnesota Mut. Investment Co.*, 271 U. S. 212, 217–218. Pp. 426–430.

24 F. 3d 188, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. BREYER, J., filed a dissenting opinion, in which O'CONNOR, J., joined, *post*, p. 431. STEVENS, J., took no part in the consideration or decision of the case.

Carter G. Phillips argued the cause for petitioners. With him on the briefs were *James S. Turner, Alan Dumoff, Jerold Oshinsky, Gregory W. Homer, Rhonda D. Orin,* and *Walter S. Rowland.*

Edward C. DuMont argued the cause for the United States. With him on the brief were *Solicitor General Days, Assistant Attorney General Hunger, Deputy Solicitor Gen-*

eral Bender, David S. Fishback, Alfred Mollin, and *Michael T. McCaul.**

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioners in this case incurred substantial costs defending, and then settling, third-party tort claims arising out of their performance of Government contracts. In this action under the Tucker Act, they sought to recover these costs from the Government on alternative theories of contractual indemnification or warranty of specifications provided by the Government. We hold that they may not do so.

When the United States had armed forces stationed in Southeast Asia in the 1960's, it asked several chemical manufacturers, including petitioners Hercules Incorporated (Hercules) and Wm. T. Thompson Company (Thompson), to manufacture and sell it a specific phenoxy herbicide, code-named Agent Orange. The Department of Defense wanted to spray the defoliant in high concentrations on tree and plant life in order to both eliminate the enemy's hiding places and destroy its food supplies. From 1964 to 1968, the Government, pursuant to the Defense Production Act of 1950 (DPA), 64 Stat. 798, as amended, 50 U. S. C. App. § 2061 *et seq.* (1988 ed. and Supp. V), entered into a series of fixed-price production contracts with petitioners. The military prescribed the formula and detailed specifications for manufacture. The contracts also instructed the suppliers to mark the drums containing the herbicide with a 3-inch orange band with "[n]o

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**Herbert L. Fenster, Ray M. Aragon,* and *Robin S. Conrad* filed a brief for the Chamber of Commerce of the United States of America as *amicus curiae* urging reversal.

Robert M. Hager filed a brief for the Agent Orange Coordinating Council as *amicus curiae* urging affirmance.

Gershon M. Ratner filed a brief for the National Veterans Legal Services Program as *amicus curiae.*

further identification as to conten[t]." Lodging 30 (available in clerk's office case file). Petitioners fully complied.

In the late 1970's, Vietnam veterans and their families began filing lawsuits against nine manufacturers of Agent Orange, including petitioners. The plaintiffs alleged that the veterans' exposure to dioxin, a toxic byproduct found in Agent Orange and believed by many to be hazardous, had caused various health problems. The lawsuits were consolidated in the Eastern District of New York and a class action was certified. *In re "Agent Orange" Product Liability Litigation*, 506 F. Supp. 762, 787–792 (1980).

District Judge Pratt awarded petitioners summary judgment on the basis of the Government contractor defense in May 1983. *In re "Agent Orange" Product Liability Litigation*, 565 F. Supp. 1263. Before the judgment was entered, however, the case was transferred to Chief Judge Weinstein, who withdrew Judge Pratt's opinion, ruled that the viability of the Government contractor defense could not be determined before trial, and reinstated petitioners as defendants. See *In re "Agent Orange" Product Liability Litigation*, 597 F. Supp. 740, 753 (1984).

In May 1984, hours before the start of trial, the parties settled. The defendants agreed to create a $180 million settlement fund with each manufacturer contributing on a market-share basis. Hercules' share was $18,772,568; Thompson's was $3,096,597. Petitioners also incurred costs defending these suits exceeding $9 million combined.[1]

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[1] Nearly 300 plaintiffs decided to "opt out" of the certified class and to proceed with their claims independent of the class action. After the class action settled, the defendant manufacturers sought and received summary judgment against these plaintiffs. The District Court found that the opt-out plaintiffs failed to present credible evidence of a causal connection between the veterans' exposure to Agent Orange and their alleged injuries and that the Government contractor defense barred liability. *In re "Agent Orange" Product Liability Litigation*, 611 F. Supp. 1223 (1985). The Court of Appeals for the Second Circuit affirmed, but solely on the basis of the Government contractor defense. *In re "Agent Orange"*

Petitioners want the United States to reimburse them for the costs of defending and settling this litigation. They attempted to recover first in District Court under tort theories of contribution and noncontractual indemnification. Having failed there,[2] they each sued the Government in the United States Claims Court, invoking jurisdiction under 28 U. S. C. § 1491, and raising various claims sounding in contract.[3] On the Government's motions, the Claims Court granted summary judgment against petitioners and dismissed both complaints. *Hercules, Inc.* v. *United States*, 25 Cl. Ct. 616 (1992); *Wm. T. Thompson Co.* v. *United States*, 26 Cl. Ct. 17 (1992).

The two cases were consolidated for appeal and a divided panel of the Court of Appeals for the Federal Circuit affirmed. 24 F. 3d 188 (1994). The court held that petitioners' claim of implied warranty of specifications failed because petitioners could not prove causation between the alleged breach and the damages. The court explained that, had petitioners pursued the class-action litigation to completion, the Government contractor defense would have barred the imposition of tort liability against them. The Government contractor defense, which many courts recognized before the *Agent Orange* settlement, but which this Court did not con-

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Product Liability Litigation, 818 F. 2d 187, 189 (1987), cert. denied *sub nom. Krupkin* v. *Dow Chemical Co.*, 487 U. S. 1234 (1988).

[2] The District Court dismissed the claims, *In re "Agent Orange" Product Liability Litigation, supra*, and the Second Circuit affirmed. The appeals court found first that *Stencel Aero Engineering Corp.* v. *United States*, 431 U. S. 666 (1977), precluded such recovery and second that "well-established principles of tort law" would not recognize contribution and indemnity where the underlying claims that settled "were without merit." *In re "Agent Orange" Product Liability Litigation, supra*, at 207.

[3] Thompson also raised in its amended complaint a claim under the Takings Clause of the Fifth Amendment, but subsequently abandoned that claim while still in the Claims Court. *Wm. T. Thompson Co.* v. *United States*, 26 Cl. Ct. 17, 22, n. 6 (1992).

sider until afterward, shields contractors from tort liability for products manufactured for the Government in accordance with Government specifications, if the contractor warned the United States about any hazards known to the contractor but not to the Government. *Boyle* v. *United Technologies Corp.*, 487 U. S. 500, 512 (1988). Because the Court of Appeals believed petitioners could have availed themselves of this defense, the court held that, by settling, petitioners voluntarily assumed liability for which the Government was not responsible. It also rejected Thompson's claim of contractual indemnification. Thompson had argued that the Government, pursuant to § 707 of the DPA, 50 U. S. C. App. § 2157 (1988 ed.), impliedly promised to indemnify Thompson for any liabilities incurred in performing under the DPA. Not persuaded, the court held that § 707 did not create indemnification, but only provided a defense to a suit brought against the contractor by a disgruntled customer whose work order the DPA contract displaced. We granted certiorari, 514 U. S. 1049 (1995), and now affirm the judgment below but on different grounds.[4]

We begin by noting the limits of federal jurisdiction. "[T]he United States, as sovereign, 'is immune from suit save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit.'" *United States* v. *Testan*, 424 U. S. 392, 399 (1976), quoting *United States* v. *Sherwood*, 312 U. S. 584, 586

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[4] JUSTICE BREYER's dissent does not distinguish between, or separately address, the warranty-of-specifications and contractual-indemnification claims. The dissent further observes that petitioners "also set forth" a third "much more general fact-based claim." *Post*, at 436. This third claim, we believe, is indistinguishable from the contractual-indemnification claim that Thompson (but not Hercules) has raised, and which we address. To the extent that it differs from a claim for contractual indemnification, we decline to consider it; such a claim was neither presented to the Court of Appeals nor argued in the briefs to this Court.

(1941). Congress created the Claims Court[5] to permit "a special and limited class of cases" to proceed against the United States, *Tennessee* v. *Sneed*, 96 U. S. 69, 75 (1878), and the court "can take cognizance only of those [claims] which by the terms of some act of Congress are committed to it," *Thurston* v. *United States*, 232 U. S. 469, 476 (1914); *United States* v. *Sherwood*, *supra*, at 586–589. The Tucker Act confers upon the court jurisdiction to hear and determine, *inter alia*, claims against the United States founded upon any "express or implied" contract with the United States. 28 U. S. C. § 1491(a).

We have repeatedly held that this jurisdiction extends only to contracts either express or implied in fact, and not to claims on contracts implied in law. *Sutton* v. *United States*, 256 U. S. 575, 581 (1921); *Merritt* v. *United States*, 267 U. S. 338, 341 (1925); *United States* v. *Minnesota Mut. Investment Co.*, 271 U. S. 212, 217 (1926); *United States* v. *Mitchell*, 463 U. S. 206, 218 (1983). Each material term or contractual obligation, as well as the contract as a whole, is subject to this jurisdictional limitation. See, *e. g.*, *Sutton*, *supra*, at 580–581 (refusing to recognize an implied agreement to pay the fair value of work performed because the term was not "express or implied in fact" in the Government contract for dredging services); *Lopez* v. *A. C. & S., Inc.*, 858 F. 2d 712, 714–715, 716 (CA Fed. 1988) (a *Spearin* warranty within an asbestos contract must be implied in fact).

The distinction between "implied in fact" and "implied in law," and the consequent limitation, is well established in

[5] Under the Federal Courts Improvement Act of 1982, the newly created Claims Court inherited substantially all of the trial court jurisdiction of the Court of Claims. 96 Stat. 25. In 1992, Congress changed the title of the Claims Court and it is now the United States Court of Federal Claims. Federal Courts Administration Act of 1992, 106 Stat. 4506. Because the most recent change went into effect after that court rendered its decision in this case, we shall refer to it as the Claims Court throughout this opinion.

our cases. An agreement implied in fact is "founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding." *Baltimore & Ohio R. Co.* v. *United States*, 261 U. S. 592, 597 (1923). See also *Russell* v. *United States*, 182 U. S. 516, 530 (1901) ("[T]o give the Court of Claims jurisdiction the demand sued on must be founded on a convention between the parties—'a coming together of minds'"). By contrast, an agreement implied in law is a "fiction of law" where "a promise is imputed to perform a legal duty, as to repay money obtained by fraud or duress." *Baltimore & Ohio R. Co.*, *supra*, at 597.

Petitioners do not contend that their contracts contain express warranty or indemnification provisions. Therefore, for them to prevail, they must establish that, based on the circumstances at the time of contracting, there was an implied agreement between the parties to provide the undertakings that petitioners allege. We consider petitioners' warranty-of-specifications and contractual-indemnification claims in turn.

The seminal case recognizing a cause of action for breach of contractual warranty of specifications is *United States* v. *Spearin*, 248 U. S. 132 (1918). In that case, Spearin had contracted to build a dry dock in accordance with the Government's plans which called for the relocation of a storm sewer. After Spearin had moved the sewer, but before he had completed the dry dock, the sewer broke and caused the site to flood. The United States refused to pay for the damages and annulled the contract. Spearin filed suit to recover the balance due on his work and lost profits. This Court held that "if the contractor is bound to build according to plans and specifications prepared by [the Government], the contractor will not be responsible for the consequences of defects in the plans and specifications." *Id.*, at 136. From this, petitioners contend the United States is responsible for

costs incurred in defending and settling the third-party tort claims.

Neither the warranty nor *Spearin* extends that far. When the Government provides specifications directing how a contract is to be performed, the Government warrants that the contractor will be able to perform the contract satisfactorily if it follows the specifications. The specifications will not frustrate performance or make it impossible. It is quite logical to infer from the circumstance of one party providing specifications for performance that that party warrants the capability of performance. But this circumstance alone does not support a further inference that would extend the warranty beyond performance to third-party claims against the contractor. In this case, for example, it would be strange to conclude that the United States, understanding the herbicide's military use, actually contemplated a warranty that would extend to sums a manufacturer paid to a third party to settle claims such as are involved in the present action. It seems more likely that the Government would avoid such an obligation, because reimbursement through contract would provide a contractor with what is denied to it through tort law. See *Stencel Aero Engineering Corp.* v. *United States*, 431 U. S. 666 (1977).[6]

[6] JUSTICE BREYER asserts, *post*, at 440, that "the majority . . . impl[ies] that a 1960's contracting officer would not have accepted an indemnification provision because of *Stencel Aero Engineering Corp.* v. *United States*, 431 U. S. 666 (1977)." The case is cited not for such an implication, but to provide added support for our decision not to extend the warranty-of-specification claim beyond performance. Although we decided *Stencel* after the formation of the Agent Orange contracts, we observed in that opinion that the Court of Appeals for the Ninth Circuit in 1964 had adopted the position we would hold in *Stencel*, and that decisions inconsistent with that view began to arise in the Circuits only in 1972. *Stencel*, 431 U. S., at 669, n. 6 (citing *United Air Lines, Inc.* v. *Wiener*, 335 F. 2d 379, 404 (CA9 1964), and *Barr* v. *Brezina Constr. Co.*, 464 F. 2d 1141, 1143–1144 (CA10 1972)). Therefore, when the contracts at issue were drafted, *Wiener* at the very least suggested that the Government would not be liable under a tort theory.

As an alternative basis for recovery, Thompson contends that the context in which the Government compelled it to manufacture Agent Orange constitutes an implied-in-fact agreement by the Government to indemnify for losses to third parties.[7] The Government required Thompson to produce under authority of the DPA and threat of civil and criminal fines, imposed detailed specifications, had superior knowledge of the hazards, and, to a measurable extent, seized Thompson's processing facilities. Under these conditions, petitioner contends, the contract must be read to include an implied agreement to protect the contractor and indemnify its losses. We cannot agree.

The circumstances surrounding the contracting are only relevant to the extent that they help us deduce what the parties to the contract agreed to in fact. These conditions here do not, we think, give rise to an implied-in-fact indemnity agreement.[8] There is also reason to think that a con-

[7] Hercules did not plead contractual indemnification in its complaint or raise the claim in the Court of Appeals. Indeed, in the Claims Court, Hercules expressly disavowed having raised any contractual-indemnification claim. Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss and for Summary Judgment in No. 90–496, p. 55 ("Hercules' claims for relief all are based on breaches of contractual duties; they are not claims that the Government has impliedly or expressly agreed to indemnify Hercules for open-ended liabilities").

[8] JUSTICE BREYER argues that the record before us does not permit us to find, as we do, that the conditions asserted do not support the inference that the contracting parties had a meeting of the minds and in fact agreed that the United States would indemnify. If JUSTICE BREYER is suggesting that the petitioners need further discovery to develop claims alleged in the complaints and not to some unarticulated third claim, see n. 4, *supra; post,* at 436), we believe his plea for further discovery must necessarily apply only to Thompson's contractual-indemnification claim; we hold in this case that the *Spearin* claims made by both petitioners do not extend to postperformance third-party costs as a matter of law. See *supra,* at 425. In any event, JUSTICE BREYER fails to explain what facts are needed, or might be developed, which would place a court on remand in a better position than where we sit today. We take all factual allegations

tracting officer would not agree to the open-ended indemnification alleged here. The Anti-Deficiency Act bars a federal employee or agency from entering into a contract for future payment of money in advance of, or in excess of, an existing appropriation. 31 U. S. C. § 1341.[9] Ordinarily no federal appropriation covers contractors' payments to third-party tort claimants in these circumstances, and the Comptroller General has repeatedly ruled that Government procurement agencies may not enter into the type of open-ended indemnity for third-party liability that petitioner Thompson claims to have implicitly received under the Agent Orange contracts.[10] We view the Anti-Deficiency Act, and the contract-

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as true and still find them inadequate. In addition, we are skeptical that any material information regarding these 30-year-old transactions remains undisclosed, yet still discoverable. Hercules, and presumably Thompson, had access to all discovery materials (including thousands of documents and scores of depositions) produced during the *Agent Orange* class-action litigation. See Motion of United States for a Protective Order Staying Discovery in No. 90–496 (Cl. Ct.), pp. 1, 3–4, n. 1.

[9] The Anti-Deficiency Act, 31 U. S. C. § 1341, provides:

"(a)(1) An officer or employee of the United States Government or of the District of Columbia government may not—

"(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

"(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."

[10] With one peculiar exception that the Comptroller General expressly sanctioned, "the accounting officers of the Government have never issued a decision sanctioning the incurring of an obligation for an open-ended indemnity in the absence of statutory authority to the contrary." *In re Assumption by Government of Contractor Liability to Third Persons—Reconsideration*, 62 Comp. Gen. 361, 364–365 (1983). JUSTICE BREYER finds our reliance on the Comptroller General problematic because of a Comptroller General opinion that finds capped indemnity agreements not improper. *Post*, at 437–438. But the Anti-Deficiency Act applies equally to capped indemnification agreements. We do not suggest that all indemnification agreements would violate the Act, cf. *infra*, at 428–429 (citing

ing officer's presumed knowledge of its prohibition, as strong evidence that the officer would not have provided, in fact, the contractual indemnification Thompson claims. In an effort to avoid the Act's reach, Thompson argues that the Anti-Deficiency Act is not applicable to an implied-in-fact indemnity because such an indemnification is "judicially fashioned" and is "not an express contractual provision." Brief for Petitioners 41. However, "[t]he limitation upon the authority to impose contract obligations upon the United States is as applicable to contracts by implication as it is to those expressly made." *Sutton*, 256 U. S., at 580 (opinion of Brandeis, J.).

When Thompson contracted with the United States, statutory mechanisms existed under which a Government contracting officer could provide an indemnity agreement to specified classes of contractors under specified conditions. See, *e. g.*, 50 U. S. C. § 1431 (1988 ed., Supp. V) (permitting the President, whenever he deems it necessary to facilitate national defense, to authorize Government contracting without regard to other provisions of law regulating the making of contracts; in 1958, the President, in Executive Order No. 10789, delegated this authority to the Department of Defense, provided that the contracts were "within the limits of the amounts appropriated and the contract authorization therefor" and "[p]roper records of all actions taken under the authority" were maintained; in 1971, the President amended the Order to specify the conditions under which indemnification could be provided to defense contractors); 10 U. S. C. § 2354 (1956 statute authorizing indemnification provisions in contracts of a military department for research or development); 42 U. S. C. § 2210 (indemnity scheme, first enacted

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statutes that expressly provide for the creation of indemnity agreements); the Act bars agreements for which there has been no appropriation. We consider open-ended indemnification in particular because that is the kind of agreement involved in this case.

in 1957, for liability arising out of a limited class of nuclear incidents, described in *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U. S. 59, 63–67 (1978)). These statutes, set out in meticulous detail and each supported by a panoply of implementing regulations,[11] would be entirely unnecessary if an implied agreement to indemnify could arise from the circumstances of contracting. We will not interpret the DPA contracts so as to render these statutes and regulations superfluous. Cf. *Astoria Federal Sav. & Loan Assn.* v. *Solimino*, 501 U. S. 104, 112 (1991).[12]

We find unpersuasive Thompson's argument that § 707 of the DPA[13] reveals Congress' intent to hold harmless manufacturers for any liabilities which flow from compliance with an order issued under the DPA. Thompson reads the provision too broadly. The statute plainly provides immunity, not indemnity. By expressly providing a defense to liability,

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[11] See, *e. g.*, 48 CFR § 235.070 (1994) (specifying criteria for indemnification clauses in Department of Defense research and development contracts); §§ 252.235–7000 to 252.235–7001 (contract language to be used for indemnification under 10 U. S. C. § 2354); 32 CFR § 7–303.62 (1983) (contract language to be used for indemnification under 50 U. S. C. §§ 1431–1435 (1988 ed. and Supp. V)).

[12] JUSTICE BREYER asserts that, by citing these statutes and regulations, "the majority implies that a contracting officer, in all likelihood, would not have agreed to an implicit promise of indemnity, for doing so would amount to a bypass of" the provisions. *Post*, at 436–437. We view the statutes and regulations, which cover different fields of Government contracting, not as implying what a contracting officer might have done with regard to the Agent Orange contracts, but as showing that a promise to indemnify should not be readily inferred.

[13] Section 707 provides, in relevant part:

"No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this Act . . . notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid." 50 U. S. C. App. § 2157 (1988 ed.).

Congress does not implicitly agree that, if liability is imposed notwithstanding that defense, the Government will reimburse the unlucky defendant.[14] We think Thompson's reliance on *Ryan Stevedoring Co.* v. *Pan-Atlantic S. S. Corp.*, 350 U. S. 124 (1956), is likewise misplaced; there, in an action between private parties, we held that the stevedore was liable to the shipowner for the amount the latter paid in damages to an injured employee of the former. Here Thompson claims a breach of warranty by its customer, not by its seller and supplier.

Perhaps recognizing the weakness of their legal position, petitioners plead "simple fairness," Tr. of Oral Arg. 3, and ask us to "redress the unmistakable inequities," Brief for Petitioners 40. Fairness, of course, is in many respects a comparative concept, and the fact that the veterans who claimed physical injury from the use of Agent Orange could not recover against the Government, see *Feres* v. *United States*, 340 U. S. 135 (1950), considerably weakens petitioners' equitable appeal. But in any event we are constrained by our limited jurisdiction and may not entertain claims "based merely on equitable considerations." *United States* v. *Minnesota Mut. Investment Co.*, 271 U. S., at 217–218.

For the foregoing reasons, the judgment of the Court of Appeals is

Affirmed.

JUSTICE STEVENS took no part in the consideration or decision of this case.

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[14] The United States urges us to interpret § 707 as only barring liability to customers whose orders are delayed or displaced on account of the priority accorded Government orders under § 101 of the DPA, which authorizes the President to require contractors to give preferential treatment to contracts "necessary or appropriate to promote the national defense." 50 U. S. C. App. § 2071(a)(1) (1988 ed., Supp. V). We need not decide the scope of § 707 in this case because it clearly functions only as an immunity, and provides no hint of a further agreement to indemnify.

JUSTICE BREYER, with whom JUSTICE O'CONNOR joins, dissenting.

The petitioners, two chemical companies, have brought this breach-of-contract action seeking reimbursement from the Government for their contribution to the settlement of lawsuits brought by Vietnam veterans exposed to their product Agent Orange. The companies argue that their contracts with the Government to produce Agent Orange contain certain promises or warranties that, in effect, hold them harmless. To win this case, as in the most elementary breach-of-contract case, the companies must show that the Government in fact made the warranties or promises, that the Government breached them, and that the Agent Orange settlement contribution was a consequent foreseeable harm. See Restatement (Second) of Contracts §§346, 347, 351 (1979); 5 A. Corbin, Contracts §§997, 1001, 1002 (1964).

The companies concede that the promises, or warranties, are not written explicitly in their contracts; but, the companies intend to prove certain background facts and legal circumstances, which, they say, will show that these promises, or warranties, are an *implicit* part of the bargain that the parties struck. See 3 *id.*, §§538, 551 (common and trade usage, course of dealings, and existing statutes and rules of law are always probative as to the meaning of the parties).

The background facts alleged include the following:

• In the 1960's the Government, by exercising special statutory authority, required the companies to enter into the Agent Orange production contracts over the explicit objection of at least one of the companies. See Defense Production Act of 1950 (DPA), 50 U. S. C. App. §2061 *et seq.* (1988 ed. and Supp. V); App. 8–9, 23–24.

• The Government required the companies to produce Agent Orange according to precise, detailed production specifications. *Ibid.*

• At that time the Government knew but did not reveal that Agent Orange was defective, or unsafe, to the point

where its use might lead to plausible tort claims advanced by those who used it. *Id.*, at 10–11, 25.

• The Government specified that the companies could not label Agent Orange in ways that might have promoted its safe use (with, say, dilution instructions), while, at the same time, the Government permitted its soldiers to use Agent Orange in unreasonably risky ways (such as using empty containers for showers or barbecues). *Id.*, at 8–10.

The background (1960's) legal circumstances include the following:

• *United States* v. *Spearin*, 248 U. S. 132 (1918), in which this Court approved the common judicial practice of reading Government contracts that provide detailed "plans and specifications," as containing an implied warranty that "the contractor will not be responsible for the consequences of defects in the plans and specifications." *Id.*, at 136.

• Lower court decisions reading Government contracts as containing an implied warranty that performance costs will not increase due to the Government's superior knowledge of undisclosed "vital information" that causes the cost increase. See *Helene Curtis Industries, Inc.* v. *United States*, 312 F. 2d 774, 777–778, and n. 1 (Ct. Cl. 1963) (collecting cases).

• The broad language of the statute that authorized the President to enter into defense procurement contracts—language broad enough to authorize Government promises to indemnify. 50 U. S. C. § 1431 (1988 ed., Supp. V); Exec. Order 10789, 3 CFR 426 (1954–1958 Comp.). See also Exec. Order 11610, 3 CFR 594 (1971–1975 Comp.) (taking view that the statute grants authority to promise indemnification).

• The language of the DPA, which, while permitting the Government to place compulsory defense orders, also says that the compelled firms shall not "be held liable for damages . . . for any act or failure to act resulting directly or indirectly from compliance with" such an "order." 50 U. S. C. App. § 2157 (1988 ed.).

These background facts and circumstances, say the companies, show that the Government knew far better than they that its Agent Orange contract specifications would force them to produce a risky product for risky use. They add that all parties knew of legal doctrines that made the Government responsible in analogous circumstances for analogous risks. They argue that the Government would not have wanted to *force* them (under the DPA) to enter into a contract subjecting them (through its specifications) to serious risks of damage, in respect to which (because of the Government's superior knowledge) they could not bargain for compensation. They conclude that the Government, in the contracts, took responsibility for those risks by implicitly promising to assume responsibility for the consequences of specification defects, including indemnification for the settlement of defect-related tort suits.

The Federal Circuit affirmed a grant of summary judgment against the companies. But, in doing so, it did not decide against the companies in respect to their claimed promises. Instead the Federal Circuit assumed (reluctantly and for argument's sake) that the companies would be able to prove the existence of the promises, but it went on to hold against them regardless. Even assuming the promises, the Circuit wrote, the companies will not be able to prove *causation* between promises and damages. The Circuit believed that, had the companies litigated the Agent Orange tort suits instead of settling them, they would have asserted a "government contractor defense," see *Boyle* v. *United Technologies Corp.*, 487 U. S. 500 (1988), and thereby won the lawsuits. It concluded that, since the companies could readily have won the suits, the settlement amounts to a "voluntary payment" that cuts any causal link between a broken promise, or warranty, and resulting harm.

The companies, in their petition for certiorari and initial brief on the merits, primarily asked us to review, and to re-

verse, this "no causation" holding. The Court, in today's opinion, does not discuss that holding. Instead it holds that the companies will not be able to prove the existence of the implicit promises. In my view, however, the record before us now does not permit this latter holding. Rather, this Court should reverse the Court of Appeals' "no causation" holding and then remand this case for further proceedings.

I need mention only one fatal flaw in the Court of Appeals' "no causation" holding, that of hindsight. The Court of Appeals, in essence, found the companies' Agent Orange settlement so obviously unnecessary, so abnormal, so far removed from ordinary litigation behavior, that it could not have been "foreseeable," see Restatement (Second) of Contracts § 351; 5 Corbin, Contracts § 1002, or (if I recast the same point in the Court's tort-like "causation" language) that it cut the causal link between promise breach and harm. But, viewed without the benefit of legal hindsight, the settlement was neither unforeseeable nor was it an intervening "cause" of the loss.

In 1984, when the companies settled, the settlement was not notably different in terms of reasonableness or motivation from other settlements that terminate major litigation, for at that time the law that might have provided the companies with a defense was far less clear than it is today. I concede that even then *some* Circuits already had found in the law a "government contractor defense" that, in effect, immunized defense contractors from most suits by servicemen claiming injury from defective products. See *McKay* v. *Rockwell International Corp.*, 704 F. 2d 444, 448–451 (CA9 1983), cert. denied, 464 U. S. 1043 (1984); *Brown* v. *Caterpillar Tractor Co.*, 696 F. 2d 246, 249–254 (CA3 1982); *Tillett* v. *J. I. Case Co.*, 756 F. 2d 591, 599–600 (CA7 1985). But, *most* of these Circuits had held that the existence of such a defense was a matter of state law, which might differ among the States. See *Brown*, *supra*; *Tillett*, *supra*; *Hansen* v. *Johns-Manville Products Corp.*, 734 F. 2d 1036, 1044–1045 (CA5

1984), cert. denied, 470 U. S. 1051 (1985). The Second Circuit, the home of the Agent Orange litigation, had not decided the issue. And, the two Agent Orange Second Circuit trial judges who (due to certain here irrelevant procedural considerations) *both* considered the companies' "government contractor" defense decided the issue in opposite ways. Compare *In re "Agent Orange" Product Liability Litigation*, 565 F. Supp. 1263, 1274–1275 (EDNY 1983), with *In re "Agent Orange" Product Liability Litigation*, 597 F. Supp. 740, 847–850 (EDNY 1984), aff'd, 818 F. 2d 145 (CA2 1987), cert. denied *sub nom. Fraticelli* v. *Dow Chemical Co.*, 484 U. S. 1004 (1988). This Court did not authoritatively uphold the "government contractor" defense until 1988, four years after the settlement here at issue. *Boyle, supra.* And, it did so on a ground different from that upon which the Circuit Courts had previously relied. Compare *McKay, supra,* at 448–451; *Tillett, supra,* at 596–597 (finding the "government contractor defense" implicit in *Feres* v. *United States*, 340 U. S. 135 (1950)), with *Boyle, supra,* at 509–511 (explicitly rejecting *Feres* as the basis for a "government contractor defense").

In light of this contemporaneous legal uncertainty, the settlement, viewed from the companies' perspective and without benefit of hindsight, seems a reasonable litigation strategy, through which the companies avoided added litigation costs and the threat of significant additional liability while helping to provide the veterans with at least some compensation. See *In re "Agent Orange,"* 597 F. Supp., at 749 (explaining why Agent Orange District Court approved the settlement). Nothing in the record here suggests the contrary. And, if reasonable at the time, the settlement must have been a "foreseeable" potential consequence of litigation and therefore within the scope of what the companies claim were implicit promises or warranties protecting them against the harms of litigation. See also 24 F. 3d 188, 205–208 (CA Fed. 1994) (Plager, C. J., dissenting). For that reason, this Court

simply should set aside the Court of Appeals' determination on the point.

The Court instead decides this case on an alternative basis, namely, that the companies cannot prove the existence of the implicit promises or warranties that they claim. But the existence of a contractual promise implied in fact is very much a creature of particular circumstance—the particular terms, the negotiating circumstances, and the background understandings of law or industry practice. See 3 Corbin, *supra*, §§562, 566–570. Unlike the majority, which compartmentalizes the companies' claims into several separate doctrinal categories (a "*Spearin*" claim, an implied indemnification claim)—each rejected separately for doctrine-specific reasons—I believe the companies' submissions, fairly read, also set forth a much more general fact-based claim. In essence, the companies say that the parties, when specifying the details of this compulsory defense order, implicitly agreed to allocate to the Government certain risks of defective-government-specification-caused harm—namely, those risks for which each company, because of its inferior knowledge, could not seek compensation in the contract price. And, the companies allege background facts that, *if true and complete* (as we must assume at this stage of the proceedings), make that implication plausible.

The legal considerations to which the majority points do not answer the companies' basic implied-in-fact contentions. To do so, the majority would have to argue that the five sets of legal circumstances to which it points, taken separately or together, show that no Government contracting officer would have agreed to a promise or warranty (of the sort claimed); hence, one cannot possibly imply the existence of such a promise "in fact." See 3 Corbin, *supra*, §561. The majority cannot argue that, because those five sets of circumstances suggest the contrary.

First, the majority implies that a contracting officer, in all likelihood, would not have agreed to an implicit promise of

indemnity, for doing so would amount to a bypass of, and "render . . . superfluous," the statutes and "panoply of implementing regulations" that set forth specific procedures that contractors must follow to obtain a promise of indemnity. *Ante*, at 429. My problem with this argument lies in the fact that, in 1964, the *relevant* statute, Executive Order, and regulations read very differently. At that time, their language was nonspecific or ambiguous on the procedures required for indemnification. The *statute* has always been phrased in general language, making no explicit reference to indemnification. See 50 U. S. C. § 1431 (1988 ed., Supp. V); 50 U. S. C. § 1431 (1964 ed.). The portion of the Executive Order that today treats indemnification as special, and sets out procedures for indemnification, *did not exist* in 1964, and the relevant regulations were also either silent or much more ambiguous than they are today. Compare Exec. Order 11610, 3 CFR 594 (1971–1975 Comp.) (indemnification), with Exec. Order 10789, 3 CFR 426 (1954–1958 Comp.) (no specific reference to indemnification); compare 32 CFR § 17–301 *et seq.* (1975) (implementing today's indemnification procedures) with 32 CFR § 17–301 *et seq.* (1964) (no reference to indemnification procedures) and 32 CFR § 17.204–4 (1960) ("Informal commitments may be formalized under certain circumstances to permit payment to persons who have taken action without formal contract [*e. g.*, where a person has furnished property or services to the military in good-faith reliance on the apparent authority of a person giving an oral instruction]. Formalization of commitments under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously"); 32 CFR § 17.206(i) (1964) (indemnification contracts must subject Government's obligation to availability of appropriated funds).

Second, the majority points to Comptroller General opinions that say that an "open-ended" agreement to indemnify would violate the Anti-Deficiency Act, 31 U. S. C. § 1341 (1988

ed.). *Ante*, at 427, and n. 10 (citing *In re Assumption by Government of Contractor Liability to Third Persons—Reconsideration*, 62 Comp. Gen. 361 (1983)). The problem with this argument is that other Comptroller General opinions say that an agreement to indemnify that is *not* open-ended, but is capped at an amount that a private insurer might have provided, is *not* improper. See *Reimbursement of Costs in Connection with Liabilities to Third Parties for Employees' Negligence*, 22 Comp. Gen. 892 (1943). A capped agreement, which, if reflected in the contract price, makes the Government a kind of self-insurer, is in effect within the appropriation (because the expenditure of assuming the risk of liability will roughly equal the cost of premiums that the Government saves by self-insuring), and may well prove sufficient for the plaintiffs' purposes. After all, on plaintiffs' factual allegations, a contractor who was as aware of the plaintiffs' alleged risks as was the Government would have sensed trouble, wanted insurance, and likely have obtained a premium payment sufficient to buy it. The companies need argue only for a capped implicit warranty that would treat the unknowing contractor similarly. See also *In re Government Indemnification of Public Utilities Against Loss Arising Out of Sale of Power to Government*, 59 Comp. Gen. 705 (1980) (indemnification in contracts with a "sole source" of a good or service lawful under Anti-Deficiency Act). Whether an agreement to spend money beyond that which was appropriated is in writing or not is irrelevant to the Anti-Deficiency Act.

Third, the majority distinguishes *United States* v. *Spearin*, 248 U. S. 132 (1918), on the ground that the implied warranty that Justice Brandeis there discussed protects a contractor from "specifications" that, in the majority's words, will "frustrate performance or make it impossible," but does not "extend . . . beyond performance to third-party claims against the contractor." *Ante*, at 425. *Spearin* itself does not make this distinction. Nor have subsequent cases. See

Michigan Wisconsin Pipeline Co. v. *Williams-McWilliams Co.*, 551 F. 2d 945 (CA5 1977) (allowing recovery against the Government of damages paid by a Government contractor to a third party to which the contractor caused damage by following Government specifications). See also 24 F. 3d, at 197 (*Spearin* holds contractor harmless if the product proves defective). If the Government must pay, say, for the contractor's own machinery destroyed by a (defective-specification-caused) explosion when that destruction frustrates performance, see *Ordnance Research, Inc.* v. *United States*, 609 F. 2d 462, 479 (Ct. Cl. 1979) (treating explosions causing increased costs as a breach of the warranty of specifications), why should the Government not also have to pay when the explosion takes place just after performance is complete? And, why should it not have to reimburse the contractor's payment for identical damage caused his next-door neighbor in the same explosion? In any event, whether or not there are good answers to these questions, they are unlikely to answer plaintiffs' *further* argument, namely that, even if *Spearin* does not *compel* a decision in their favor, it offers indirect support, as background, for implying a promise that would provide (in the particular circumstances) *Spearin-like* protection.

Fourth, the majority says that the DPA's "hold harmless" provision ("No person shall be held liable for damages . . . for any act or failure to act resulting directly or indirectly from compliance with [an] order") does not provide for indemnification. *Ante*, at 429. The petitioners, however, do not claim the contrary. They state explicitly that they "do not attempt to interpret the DPA's hold harmless language as an affirmative indemnity." Reply Brief for Petitioners 2. They add that "an indemnity should be implied from all the circumstances of this case, including the circumstance that petitioners and the Government contracted against the backdrop of the sweeping hold harmless language contained in the DPA." *Ibid.* They argue simply that the DPA's stated

objective—to relieve them of involuntarily created liability—would have led contracting officers in the 1960's (given the parties' uncertainty about future statutory interpretation) to have believed that a contractual "hold harmless" warranty was reasonable in the circumstances, not the contrary. See 3 Corbin, Contracts § 551 (existing statutes and rules of law are always evidence of the meaning of the parties). The relevant point is not whether Congress intended to indemnify, but the likely effect of the DPA's language (before judicial interpretation limited it to an immunity provision) on what risks contracting officers at the time might have thought the Government was assuming in a *forced* production contract under the Act.

Fifth, both the Federal Circuit, 24 F. 3d, at 198, n. 8, and the majority, *ante*, at 425, imply that a 1960's contracting officer would not have accepted an indemnification provision because of *Stencel Aero Engineering Corp.* v. *United States*, 431 U. S. 666 (1977). That case held (in light of the *Feres* doctrine providing the Government with immunity from armed services personnel tort suits) that Government contractors, whom armed services personnel had sued in tort, could not, in turn, sue the Government for indemnification. Otherwise a soldier, unable (given *Feres*) to sue the Government for injury caused, say, by a defective rifle, would sue the rifle manufacturer instead, and the rifle manufacturer would then sue the Government for indemnity, thereby, in a sense, circumventing the immunity that *Feres* promised the Government.

One problem with this argument is that *Stencel* postdates the formation of the contracts here at issue by about a decade. More importantly *Stencel* does not involve *contractual promises* to indemnify a contractor. Rather it concerns an indemnification provided by state tort law. *Stencel*, *supra*, at 667–668, nn. 2, 3. And, it nowhere says, or directly implies, that the law prohibits the Government from agreeing, explicitly or implicitly, to indemnify a contractor. Indeed,

this Court has explicitly written that it "fail[s] to see how the *Stencel* holding . . . supports the conclusion that if the Tort Claims Act bars a tort remedy, neither is there a contractual remedy. The absence of Government tort liability has not been thought to bar contractual remedies on implied-in-fact contracts, even in those cases also having elements of a tort." *Hatzlachh Supply Co.* v. *United States*, 444 U. S. 460, 465 (1980) *(per curiam)*. I agree with the majority insofar as it warns against a court's *too easily* reading an implicit promise to indemnify a contractor's armed-services-related tort liability; but, then, its words would represent simply a wise caution and not an absolute prohibition.

In sum, the companies argue factual circumstances—compelled production, superior knowledge, detailed specifications, and significant defect—which, if true, suggest that a government, dealing in good faith with its contractors, would have agreed to the "implied" promise, particularly in light of legal authorities, known at the time, that offered somewhat similar guarantees to contractors in somewhat similar circumstances. The validity of their claim is likely to turn on the strength of the companies' factual case, as supported by evidence, and upon the details of Government contracting practices in the 1960's—matters not now before us and with which the lower courts are more familiar than are we.

The Court today unnecessarily restricts *Spearin* warranties, and, lacking particular facts at this stage of the proceeding, it relies on statutory circumstances that are common to many Government contracts. I fear that the practical effect of disposing of the companies' claim at this stage of the proceeding will be to make it more difficult, in other cases even if not here, for courts to interpret Government contracts with an eye toward achieving the fair allocation of risks that the parties likely intended.

For these reasons, I would remand this case for further proceedings.

Syllabus

BENNIS *v.* MICHIGAN

CERTIORARI TO THE SUPREME COURT OF MICHIGAN

No. 94–8729. Argued November 29, 1995—Decided March 4, 1996

Petitioner was a joint owner, with her husband, of an automobile in which her husband engaged in sexual activity with a prostitute. In declaring the automobile forfeit as a public nuisance under Michigan's statutory abatement scheme, the trial court permitted no offset for petitioner's interest, notwithstanding her lack of knowledge of her husband's activity. The Michigan Court of Appeals reversed, but was in turn reversed by the State Supreme Court, which concluded, *inter alia*, that Michigan's failure to provide an innocent-owner defense was without federal constitutional consequence under this Court's decisions.

Held: The forfeiture order did not offend the Due Process Clause of the Fourteenth Amendment or the Takings Clause of the Fifth Amendment. Pp. 446–453.

(a) Michigan's abatement scheme has not deprived petitioner of her interest in the forfeited car without due process. Her claim that she was entitled to contest the abatement by showing that she did not know that her husband would use the car to violate state law is defeated by a long and unbroken line of cases in which this Court has held that an owner's interest in property may be forfeited by reason of the use to which the property is put even though the owner did not know that it was to be put to such use. See, *e. g.*, *Van Oster* v. *Kansas*, 272 U. S. 465, 467–468, and *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663, 668, 683; *Foucha* v. *Louisiana*, 504 U. S. 71, 80, and *Austin* v. *United States*, 509 U. S. 602, 617–618, distinguished. These cases are too firmly fixed in the country's punitive and remedial jurisprudence to be now displaced. Cf. *J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U. S. 505, 511. Pp. 446–452.

(b) Michigan's abatement scheme has not taken petitioner's property for public use without compensation. Because the forfeiture proceeding did not violate the Fourteenth Amendment, her property in the automobile was transferred by virtue of that proceeding to the State. The government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain. See, *e. g.*, *United States* v. *Fuller*, 409 U. S. 488, 492. Pp. 452–453.

447 Mich. 719, 527 N. W. 2d 483, affirmed.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, THOMAS, and GINSBURG, JJ., joined. THOMAS, J., *post*, p. 453, and GINSBURG, J., *post*, p. 457, filed concurring opinions. STEVENS, J., filed a dissenting opinion, in which SOUTER and BREYER, JJ., joined, *post*, p. 458. KENNEDY, J., filed a dissenting opinion, *post*, p. 472.

Stefan B. Herpel argued the cause and filed briefs for petitioner.

Larry L. Roberts argued the cause for respondent. With him on the brief were *John D. O'Hair* and *George E. Ward.*

Richard H. Seamon argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Days, Acting Assistant Attorney General Keeney,* and *Deputy Solicitor General Dreeben.**

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner was a joint owner, with her husband, of an automobile in which her husband engaged in sexual activity with a prostitute. A Michigan court ordered the automobile forfeited as a public nuisance, with no offset for her interest, notwithstanding her lack of knowledge of her husband's activity. We hold that the Michigan court order did not offend the Due Process Clause of the Fourteenth Amendment or the Takings Clause of the Fifth Amendment.

Detroit police arrested John Bennis after observing him engaged in a sexual act with a prostitute in the automobile while it was parked on a Detroit city street. Bennis was convicted of gross indecency.[1] The State then sued both

*Briefs of *amici curiae* urging reversal were filed for the American Bankers Association by *John J. Gill III* and *Michael F. Crotty;* for the Institute for Justice by *William H. Mellor III* and *Clint Bolick;* and for the National Association of Criminal Defense Lawyers by *E. E. Edwards III* and *Richard J. Troberman.*

Richard K. Willard and *Robert Teir* filed a brief of *amicus curiae* for the American Alliance for Rights and Responsibilities et al.

[1] Mich. Comp. Laws § 750.338b (1979).

Bennis and his wife, petitioner Tina B. Bennis, to have the car declared a public nuisance and abated as such under §§ 600.3801[2] and 600.3825[3] of Michigan's Compiled Laws.

Petitioner defended against the abatement of her interest in the car on the ground that, when she entrusted her husband to use the car, she did not know that he would use it to violate Michigan's indecency law. The Wayne County Circuit Court rejected this argument, declared the car a public nuisance, and ordered the car's abatement. In reaching this disposition, the trial court judge recognized the remedial discretion he had under Michigan's case law. App. 21. He

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[2] Section 600.3801 states in pertinent part:

"Any building, vehicle, boat, aircraft, or place used for the purpose of lewdness, assignation or prostitution or gambling, or used by, or kept for the use of prostitutes or other disorderly persons, . . . is declared a nuisance, . . . and all . . . nuisances shall be enjoined and abated as provided in this act and as provided in the court rules. Any person or his or her servant, agent, or employee who owns, leases, conducts, or maintains any building, vehicle, or place used for any of the purposes or acts set forth in this section is guilty of a nuisance." Mich. Comp. Laws Ann. § 600.3801 (West Supp. 1995).

[3] Section 600.3825 states in pertinent part:

"(1) Order of abatement. If the existence of the nuisance is established in an action as provided in this chapter, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all furniture, fixtures and contents therein and shall direct the sale thereof in the manner provided for the sale of chattels under execution . . . .

"(2) Vehicles, sale. Any vehicle, boat, or aircraft found by the court to be a nuisance within the meaning of this chapter, is subject to the same order and judgment as any furniture, fixtures and contents as herein provided.

"(3) Sale of personalty, costs, liens, balance to state treasurer. Upon the sale of any furniture, fixtures, contents, vehicle, boat or aircraft as provided in this section, the officer executing the order of the court shall, after deducting the expenses of keeping such property and costs of such sale, pay all liens according to their priorities . . . , and shall pay the balance to the state treasurer to be credited to the general fund of the state. . . ." Mich. Comp. Laws § 600.3825 (1979).

took into account the couple's ownership of "another automobile," so they would not be left "without transportation." *Id.*, at 25. He also mentioned his authority to order the payment of one-half of the sale proceeds, after the deduction of costs, to "the innocent co-title holder." *Id.*, at 21. He declined to order such a division of sale proceeds in this case because of the age and value of the car (an 11-year-old Pontiac sedan recently purchased by John and Tina Bennis for $600); he commented in this regard: "[T]here's practically nothing left minus costs in a situation such as this." *Id.*, at 25.

The Michigan Court of Appeals reversed, holding that regardless of the language of Michigan Compiled Law § 600.3815(2),[4] Michigan Supreme Court precedent interpreting this section prevented the State from abating petitioner's interest absent proof that she knew to what end the car would be used. Alternatively, the intermediate appellate court ruled that the conduct in question did not qualify as a public nuisance because only one occurrence was shown and there was no evidence of payment for the sexual act. 200 Mich. App. 670, 504 N. W. 2d 731 (1993).

The Michigan Supreme Court reversed the Court of Appeals and reinstated the abatement in its entirety. 447 Mich. 719, 527 N. W. 2d 483 (1994). It concluded as a matter of state law that the episode in the Bennis vehicle was an abatable nuisance. Rejecting the Court of Appeals' interpretation of § 600.3815(2), the court then announced that, in order to abate an owner's interest in a vehicle, Michigan does not need to prove that the owner knew or agreed that her vehicle would be used in a manner proscribed by § 600.3801 when she entrusted it to another user. *Id.*, at 737, 527 N. W. 2d, at 492. The court next addressed petitioner's

[4] "Proof of knowledge of the existence of the nuisance on the part of the defendants or any of them, is not required." Mich. Comp. Laws § 600.3815(2) (1979).

federal constitutional challenges to the State's abatement scheme: The court assumed that petitioner did not know of or consent to the misuse of the Bennis car, and concluded in light of our decisions in *Van Oster* v. *Kansas*, 272 U. S. 465 (1926), and *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663 (1974), that Michigan's failure to provide an innocent-owner defense was "without constitutional consequence." 447 Mich., at 740–741, 527 N. W. 2d, at 493–494. The Michigan Supreme Court specifically noted that, in its view, an owner's interest may not be abated when "a vehicle is used without the owner's consent." *Id.*, at 742, n. 36, 527 N. W. 2d, at 495, n. 36. Furthermore, the court confirmed the trial court's description of the nuisance abatement proceeding as an "equitable action," and considered it "critical" that the trial judge so comprehended the statute. *Id.*, at 742, 527 N. W. 2d, at 495.

We granted certiorari in order to determine whether Michigan's abatement scheme has deprived petitioner of her interest in the forfeited car without due process, in violation of the Fourteenth Amendment, or has taken her interest for public use without compensation, in violation of the Fifth Amendment as incorporated by the Fourteenth Amendment. 515 U. S. 1121 (1995). We affirm.

The gravamen of petitioner's due process claim is not that she was denied notice or an opportunity to contest the abatement of her car; she was accorded both. Cf. *United States* v. *James Daniel Good Real Property*, 510 U. S. 43 (1993). Rather, she claims she was entitled to contest the abatement by showing she did not know her husband would use it to violate Michigan's indecency law. But a long and unbroken line of cases holds that an owner's interest in property may be forfeited by reason of the use to which the property is put even though the owner did not know that it was to be put to such use.

Our earliest opinion to this effect is Justice Story's opinion for the Court in *The Palmyra*, 12 Wheat. 1 (1827). The Pal-

myra, which had been commissioned as a privateer by the King of Spain and had attacked a United States vessel, was captured by a United States warship and brought into Charleston, South Carolina, for adjudication. *Id.*, at 8. On the Government's appeal from the Circuit Court's acquittal of the vessel, it was contended by the owner that the vessel could not be forfeited until he was convicted for the privateering. The Court rejected this contention, explaining: "The thing is here primarily considered as the offender, or rather the offence is attached primarily to the thing." *Id.*, at 14. In another admiralty forfeiture decision 17 years later, Justice Story wrote for the Court that in *in rem* admiralty proceedings "the acts of the master and crew . . . bind the interest of the owner of the ship, *whether he be innocent or guilty;* and he impliedly submits to whatever the law denounces as a forfeiture attached to the ship by reason of their unlawful or wanton wrongs." *Harmony* v. *United States*, 2 How. 210, 234 (1844) (emphasis added).

In *Dobbins's Distillery* v. *United States*, 96 U. S. 395, 401 (1878), this Court upheld the forfeiture of property used by a lessee in fraudulently avoiding federal alcohol taxes, observing: "Cases often arise where the property of the owner is forfeited on account of the fraud, neglect, or misconduct of those intrusted with its possession, care, and custody, even when the owner is otherwise without fault . . . and it has always been held . . . that the acts of [the possessors] bind the interest of the owner . . . whether he be innocent or guilty."

In *Van Oster* v. *Kansas*, 272 U. S. 465 (1926), this Court upheld the forfeiture of a purchaser's interest in a car misused by the seller. Van Oster purchased an automobile from a dealer but agreed that the dealer might retain possession for use in its business. The dealer allowed an associate to use the automobile, and the associate used it for the illegal transportation of intoxicating liquor. *Id.*, at 465–466. The State brought a forfeiture action pursuant to a Kansas stat-

ute, and Van Oster defended on the ground that the transportation of the liquor in the car was without her knowledge or authority. This Court rejected Van Oster's claim:

> "It is not unknown or indeed uncommon for the law to visit upon the owner of property the unpleasant consequences of the unauthorized action of one to whom he has entrusted it. Much of the jurisdiction in admiralty, so much of the statute and common law of liens as enables a mere bailee to subject the bailed property to a lien, the power of a vendor of chattels in possession to sell and convey good title to a stranger, are familiar examples. . . . They suggest that certain uses of property may be regarded as so undesirable that the owner surrenders his control at his peril. . . .
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> "It has long been settled that statutory forfeitures of property entrusted by the innocent owner or lienor to another who uses it in violation of the revenue laws of the United States is not a violation of the due process clause of the Fifth Amendment." *Id.*, at 467–468.

The *Van Oster* Court relied on *J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U. S. 505 (1921), in which the Court upheld the forfeiture of a seller's interest in a car misused by the purchaser. The automobile was forfeited after the purchaser transported bootleg distilled spirits in it, and the selling dealership lost the title retained as security for unpaid purchase money. *Id.*, at 508–509. The Court discussed the arguments for and against allowing the forfeiture of the interest of an owner who was "without guilt," *id.*, at 510, and concluded that "whether the reason for [the challenged forfeiture scheme] be artificial or real, it is too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced," *id.*, at 511.[5]

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[5] In *Austin* v. *United States*, 509 U. S. 602, 617 (1993), the Court observed that *J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U. S. 505 (1921), "expressly reserved the question whether the [guilty-property]

In *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663 (1974), the most recent decision on point, the Court reviewed the same cases discussed above, and concluded that "the innocence of the owner of property subject to forfeiture has almost uniformly been rejected as a defense." *Id.*, at 683. Petitioner is in the same position as the various owners involved in the forfeiture cases beginning with *The Palmyra* in 1827. She did not know that her car would be used in an illegal activity that would subject it to forfeiture. But under these cases the Due Process Clause of the Fourteenth Amendment does not protect her interest against forfeiture by the government.

Petitioner relies on a passage from *Calero-Toledo*, that "it would be difficult to reject the constitutional claim of . . . an owner who proved not only that he was uninvolved in and unaware of the wrongful activity, but also that he had done

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fiction could be employed to forfeit the property of a truly innocent owner." This observation is quite mistaken. The *Goldsmith-Grant* Court expressly reserved opinion "as to whether the section can be extended to property *stolen* from the owner or otherwise taken from him *without his privity or consent.*" *Id.*, at 512 (emphases added). In other words, the *Goldsmith-Grant* Court drew the very same distinction made by the Michigan Supreme Court in this case: "the distinction between the situation in which a vehicle is used without the owner's consent," and one in which, "although the owner consented to [another person's] use, [the vehicle] is used in a *manner* to which the owner did not consent." 447 Mich., at 742, n. 36, 527 N. W. 2d, at 495, n. 36. Because John Bennis co-owned the car at issue, petitioner cannot claim she was in the former situation.

The dissent, *post*, at 466–468, and n. 12, quoting *Peisch* v. *Ware*, 4 Cranch 347, 364 (1808), seeks to enlarge the reservation in *Goldsmith-Grant* into a general principle that "'a forfeiture can only be applied to those cases in which the means that are prescribed for the prevention of a forfeiture may be employed.'" But *Peisch* was dealing with the same question reserved in *Goldsmith-Grant*, not any broader proposition: "If, by private theft, or open robbery, without any fault on his part, [an owner's] property should be invaded, . . . the law cannot be understood to punish him with the forfeiture of that property." 4 Cranch, at 364.

all that reasonably could be expected to prevent the proscribed use of his property." 416 U. S., at 689. But she concedes that this comment was *obiter dictum*, and "[i]t is to the holdings of our cases, rather than their dicta, that we must attend." *Kokkonen* v. *Guardian Life Ins. Co. of America*, 511 U. S. 375, 379 (1994). And the *holding* of *Calero-Toledo* on this point was that the interest of a yacht rental company in one of its leased yachts could be forfeited because of its use for transportation of controlled substances, even though the company was "'in no way . . . involved in the criminal enterprise carried on by [the] lessee' and 'had no knowledge that its property was being used in connection with or in violation of [Puerto Rican Law].'" 416 U. S., at 668. Petitioner has made no showing beyond that here.

JUSTICE STEVENS' dissent argues that our cases treat contraband differently from instrumentalities used to convey contraband, like cars: Objects in the former class are forfeitable "however blameless or unknowing their owners may be," *post*, at 459, but with respect to an instrumentality in the latter class, an owner's innocence is no defense only to the "principal use being made of that property," *post*, at 461. However, this Court's precedent has never made the due process inquiry depend on whether the use for which the instrumentality was forfeited was the principal use. If it had, perhaps cases like *Calero-Toledo*, in which Justice Douglas noted in dissent that there was no showing that the "yacht had been notoriously used in smuggling drugs . . . and so far as we know only one marihuana cigarette was found on the yacht," 416 U. S., at 693 (opinion dissenting in part), might have been decided differently.

The dissent also suggests that *The Palmyra* line of cases "would justify the confiscation of an ocean liner just because one of its passengers sinned while on board." *Post*, at 462. None of our cases have held that an ocean liner may be confiscated because of the activities of one passenger. We said in *Goldsmith-Grant*, and we repeat here, that "[w]hen such

application shall be made it will be time enough to pronounce upon it." 254 U. S., at 512.

Notwithstanding this well-established authority rejecting the innocent-owner defense, petitioner argues that we should in effect overrule it by importing a culpability requirement from cases having at best a tangential relation to the "innocent owner" doctrine in forfeiture cases. She cites *Foucha* v. *Louisiana*, 504 U. S. 71 (1992), for the proposition that a criminal defendant may not be punished for a crime if he is found to be not guilty. She also argues that our holding in *Austin* v. *United States*, 509 U. S. 602 (1993), that the Excessive Fines Clause[6] limits the scope of civil forfeiture judgments, "would be difficult to reconcile with any rule allowing truly innocent persons to be punished by civil forfeiture." Brief for Petitioner 18–19, n. 12.

In *Foucha* the Court held that a defendant found not guilty by reason of insanity in a criminal trial could not be thereafter confined indefinitely by the State without a showing that he was either dangerous or mentally ill. Petitioner argues that our statement that in those circumstances a State has no "punitive interest" which would justify continued detention, 504 U. S., at 80, requires that Michigan demonstrate a punitive interest in depriving her of her interest in the forfeited car. But, putting aside the extent to which a forfeiture proceeding is "punishment" in the first place, *Foucha* did not purport to discuss, let alone overrule, *The Palmyra* line of cases.

In *Austin*, the Court held that because "forfeiture serves, at least in part, to punish the owner," forfeiture proceedings are subject to the limitations of the Eighth Amendment's prohibition against excessive fines. 509 U. S., at 618. There was no occasion in that case to deal with the validity of the "innocent-owner defense," other than to point out that if a forfeiture statute allows such a defense, the defense is

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[6] U. S. Const., Amdt. 8.

additional evidence that the statute itself is "punitive" in motive. *Id.*, at 617–618. In this case, however, Michigan's Supreme Court emphasized with respect to the forfeiture proceeding at issue: "It is not contested that this is an equitable action," in which the trial judge has discretion to consider "alternatives [to] abating the entire interest in the vehicle." 447 Mich., at 742, 527 N. W. 2d, at 495.

In any event, for the reasons pointed out in *Calero-Toledo* and *Van Oster*, forfeiture also serves a deterrent purpose distinct from any punitive purpose. Forfeiture of property prevents illegal uses "both by preventing further illicit use of the [property] and by imposing an economic penalty, thereby rendering illegal behavior unprofitable." *Calero-Toledo*, *supra*, at 687. This deterrent mechanism is hardly unique to forfeiture. For instance, because Michigan also deters dangerous driving by making a motor vehicle owner liable for the negligent operation of the vehicle by a driver who had the owner's consent to use it, petitioner was also potentially liable for her husband's use of the car in violation of Michigan negligence law. Mich. Comp. Laws § 257.401 (1979). "The law thus builds a secondary defense against a forbidden use and precludes evasions by dispensing with the necessity of judicial inquiry as to collusion between the wrongdoer and the alleged innocent owner." *Van Oster*, 272 U. S., at 467–468.

Petitioner also claims that the forfeiture in this case was a taking of private property for public use in violation of the Takings Clause of the Fifth Amendment, made applicable to the States by the Fourteenth Amendment. But if the forfeiture proceeding here in question did not violate the Fourteenth Amendment, the property in the automobile was transferred by virtue of that proceeding from petitioner to the State. The government may not be required to compensate an owner for property which it has already lawfully acquired under the exercise of governmental authority other than the power of eminent domain. *United States* v. *Fuller*,

409 U. S. 488, 492 (1973); see *United States* v. *Rands*, 389 U. S. 121, 125 (1967).

At bottom, petitioner's claims depend on an argument that the Michigan forfeiture statute is unfair because it relieves prosecutors from the burden of separating co-owners who are complicit in the wrongful use of property from innocent co-owners. This argument, in the abstract, has considerable appeal, as we acknowledged in *Goldsmith-Grant*, 254 U. S., at 510. Its force is reduced in the instant case, however, by the Michigan Supreme Court's confirmation of the trial court's remedial discretion, see *supra*, at 446, and petitioner's recognition that Michigan may forfeit her and her husband's car whether or not she is entitled to an offset for her interest in it, Tr. of Oral Arg. 7, 9.

We conclude today, as we concluded 75 years ago, that the cases authorizing actions of the kind at issue are "too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced." *Goldsmith-Grant*, *supra*, at 511. The State here sought to deter illegal activity that contributes to neighborhood deterioration and unsafe streets. The Bennis automobile, it is conceded, facilitated and was used in criminal activity. Both the trial court and the Michigan Supreme Court followed our longstanding practice, and the judgment of the Supreme Court of Michigan is therefore

Affirmed.

JUSTICE THOMAS, concurring.

I join the opinion of the Court.

Mrs. Bennis points out that her property was forfeited even though the State did not prove her guilty of any wrongdoing. The State responds that forfeiture of property simply because it was used in crime has been permitted time out of mind. It also says that it wants to punish, for deterrence and perhaps also for retributive purposes, persons who *may* have colluded or acquiesced in criminal use of their

property, or who *may* at least have negligently entrusted their property to someone likely to use it for misfeasance. But, the State continues, it does not want to have to *prove* (or to refute proof regarding) collusion, acquiescence, or negligence.

As the Court notes, evasion of the normal requirement of proof before punishment might well seem "unfair." *Ante*, at 453. One unaware of the history of forfeiture laws and 200 years of this Court's precedent regarding such laws might well assume that such a scheme is lawless—a violation of due process. As the Court remarked 75 years ago in ruling upon a constitutional challenge to forfeiture of the property of an innocent owner:

> "If the case were the first of its kind, it and its apparent paradoxes might compel a lengthy discussion to harmonize the [statute at issue] with the accepted tests of human conduct. . . . There is strength . . . in the contention that . . . [the statute at issue] seems to violate that justice which should be the foundation of the due process of law required by the Constitution." *J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U. S. 505, 510 (1921).

But the Court went on to uphold the statute, based upon the historical prevalence and acceptance of similar laws. *Id.*, at 510–511.

This case is ultimately a reminder that the Federal Constitution does not prohibit everything that is intensely undesirable. See, *e. g.*, *Herrera* v. *Collins*, 506 U. S. 390, 428, and n. (1993) (SCALIA, J., concurring). As detailed in the Court's opinion and the cases cited therein, forfeiture of property without proof of the owner's wrongdoing, merely because it was "used" in or was an "instrumentality" of crime has been permitted in England and this country, both before and after the adoption of the Fifth and Fourteenth Amendments. Cf. *Burnham* v. *Superior Court of Cal., County of Marin*, 495 U. S. 604, 619 (1990) (plurality opinion) (a process of law that

can show the sanction of settled usage both in England and in this country must be taken to be due process of law) (citing *Hurtado* v. *California*, 110 U. S. 516, 528–529 (1884)). Indeed, 70 years ago this Court held in *Van Oster* v. *Kansas*, 272 U. S. 465 (1926), that an automobile used in crime could be forfeited notwithstanding the absence of any proof that the criminal use occurred with "knowledge or authority" of the owner. *Id.*, at 466. A law of forfeiture without an exception for innocent owners, the Court said, "builds a secondary defense" for the State "against a forbidden use and precludes evasions by dispensing with the necessity of judicial inquiry as to collusion between the wrongdoer and the alleged innocent owner." *Id.*, at 467–468.

The limits on *what* property can be forfeited as a result of what wrongdoing—for example, what it means to "use" property in crime for purposes of forfeiture law—are not clear to me. See *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 81–83 (1993) (THOMAS, J., concurring in part and dissenting in part). Those limits, whatever they may be, become especially significant when they are the sole restrictions on the state's ability to take property from those it merely suspects, or does not even suspect, of colluding in crime. It thus seems appropriate, where a constitutional challenge by an innocent owner is concerned, to apply those limits rather strictly, adhering to historical standards for determining whether specific property is an "instrumentality" of crime. Cf. *J. W. Goldsmith, Jr.-Grant Co.*, *supra*, at 512 (describing more extreme hypothetical applications of a forfeiture law and reserving decision on the permissibility of such applications). The facts here, however, do not seem to me to be obviously distinguishable from those involved in *Van Oster;* and in any event, Mrs. Bennis has not asserted that the car was not an instrumentality of her husband's crime.

If anything, the forfeiture in *Van Oster* was harder to justify than is the forfeiture here, albeit in a different respect.

In this case, the trial judge apparently found that the sales price of the car would not exceed by much the "costs" to be deducted from the sale; and he took that fact into account in determining how to dispose of the proceeds of the sale of the car. The state statute has labeled the car a "nuisance" and authorized a procedure for preventing the risk of continued criminal use of it by Mr. Bennis (forfeiture and sale); under a different statutory regime, the State might have authorized the destruction of the car instead, and the State would have had a plausible argument that the order for destruction was "remedial" and thus noncompensable. That it chose to order the car sold, with virtually nothing left over for the State after "costs," may not change the "remedial" character of the State's action substantially. And if the forfeiture of the car here (and the State's refusal to remit any share of the proceeds from its sale to Mrs. Bennis) can appropriately be characterized as "remedial" action, then the more severe problems involved in punishing someone not found to have engaged in wrongdoing of any kind do not arise.*

Improperly used, forfeiture could become more like a roulette wheel employed to raise revenue from innocent but hapless owners whose property is unforeseeably misused, or a tool wielded to punish those who associate with criminals, than a component of a system of justice. When the property sought to be forfeited has been entrusted by its owner to one who uses it for crime, however, the Constitution apparently

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*This is most obviously true if, in stating that there would be little left over after "costs," the trial judge was referring to the costs of sale. The court's order indicates that he may have had other "costs" in mind as well when he made that statement, *e. g.*, law enforcement costs. See also Mich. Comp. Laws § 600.3825(3) (1979) (costs of keeping the car to be deducted). Even if the "costs" that the trial judge believed would consume most of the sales proceeds included not simply the expected costs of sale, but also the State's costs of keeping the car and law enforcement costs related to this particular proceeding, the State would still have a plausible argument that using the sales proceeds to pay such costs was "remedial" action, rather than punishment.

assigns to the States and to the political branches of the Federal Government the primary responsibility for avoiding that result.

JUSTICE GINSBURG, concurring.

I join the opinion of the Court and highlight features of the case key to my judgment.

The dissenting opinions target a law scarcely resembling Michigan's "red light abatement" prescription, as interpreted by the State's courts. First, it bears emphasis that the car in question belonged to John Bennis as much as it did to Tina Bennis. At all times he had her consent to use the car, just as she had his. See *ante*, at 448–449, n. 5 (majority opinion) (noting Michigan Supreme Court's distinction between use of a vehicle without the owner's consent, and use with consent but in a manner to which the owner did not consent). And it is uncontested that Michigan may forfeit the vehicle itself. See *ante*, at 453 (majority opinion) (citing Tr. of Oral Arg. 7, 9). The sole question, then, is whether Tina Bennis is entitled not to the car, but to a portion of the proceeds (if any there be after deduction of police, prosecutorial, and court costs) as a matter of constitutional right.

Second, it was "critical" to the judgment of the Michigan Supreme Court that the nuisance abatement proceeding is an "equitable action." See *ante*, at 446 (majority opinion) (citing 447 Mich. 719, 742, 527 N. W. 2d 483, 495 (1994)). That means the State's Supreme Court stands ready to police exorbitant applications of the statute. It shows no respect for Michigan's high court to attribute to its members tolerance of, or insensitivity to, inequitable administration of an "equitable action."

Nor is it fair to charge the trial court with "blatant unfairness" in the case at hand. See *post*, at 470–471, n. 14, and 472 (STEVENS, J., dissenting). That court declined to order a division of sale proceeds, as the trial judge took pains to explain, for two practical reasons: the Bennises have "an-

other automobile," App. 25; and the age and value of the forfeited car (an 11-year-old Pontiac purchased by John and Tina Bennis for $600) left "practically nothing" to divide after subtraction of costs. See *ante*, at 445 (majority opinion) (citing App. 25).

Michigan, in short, has not embarked on an experiment to punish innocent third parties. See *post* this page (STEVENS, J., dissenting). Nor do we condone any such experiment. Michigan has decided to deter johns from using cars they own (or co-own) to contribute to neighborhood blight, and that abatement endeavor hardly warrants this Court's disapprobation.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE BREYER join, dissenting.

For centuries prostitutes have been plying their trade on other people's property. Assignations have occurred in palaces, luxury hotels, cruise ships, college dormitories, truck stops, back alleys and back seats. A profession of this vintage has provided governments with countless opportunities to use novel weapons to curtail its abuses. As far as I am aware, however, it was not until 1988 that any State decided to experiment with the punishment of innocent third parties by confiscating property in which, or on which, a single transaction with a prostitute has been consummated.

The logic of the Court's analysis would permit the States to exercise virtually unbridled power to confiscate vast amounts of property where professional criminals have engaged in illegal acts. Some airline passengers have marijuana cigarettes in their luggage; some hotel guests are thieves; some spectators at professional sports events carry concealed weapons; and some hitchhikers are prostitutes. The State surely may impose strict obligations on the owners of airlines, hotels, stadiums, and vehicles to exercise a high degree of care to prevent others from making illegal use of their property, but neither logic nor history supports the

Court's apparent assumption that their complete innocence imposes no constitutional impediment to the seizure of their property simply because it provided the locus for a criminal transaction.

In order to emphasize the novelty of the Court's holding, I shall first comment on the tenuous connection between the property forfeited here and the illegal act that was intended to be punished, which differentiates this case from the precedent on which the Court relies. I shall then comment on the significance of the complete lack of culpability ascribable to petitioner in this case. Finally, I shall explain why I believe our recent decision in *Austin* v. *United States*, 509 U. S. 602 (1993), compels reversal.

I

For purposes of analysis it is useful to identify three different categories of property that are subject to seizure: pure contraband; proceeds of criminal activity; and tools of the criminal's trade.

The first category—pure contraband—encompasses items such as adulterated food, sawed-off shotguns, narcotics, and smuggled goods. With respect to such "objects the possession of which, without more, constitutes a crime," *One 1958 Plymouth Sedan* v. *Pennsylvania*, 380 U. S. 693, 699 (1965), the government has an obvious remedial interest in removing the items from private circulation, however blameless or unknowing their owners may be. The States' broad and well-established power to seize pure contraband is not implicated by this case, for automobiles are not contraband. See *ibid.*

The second category—proceeds—traditionally covered only stolen property, whose return to its original owner has a powerful restitutionary justification. Recent federal statutory enactments have dramatically enlarged this category to include the earnings from various illegal transactions. See *United States* v. *Parcel of Rumson, N. J., Land*, 507 U. S.

111, 121, n. 16 (1993). Because those federal statutes include protections for innocent owners, see 21 U. S. C. § 881(a)(6), cases arising out of the seizure of proceeds do not address the question whether the Constitution would provide a defense to an innocent owner in certain circumstances if the statute had not done so. The prevalence of protection for innocent owners in such legislation does, however, lend support to the conclusion that elementary notions of fairness require some attention to the impact of a seizure on the rights of innocent parties.[1]

The third category includes tools or instrumentalities that a wrongdoer has used in the commission of a crime, also known as "derivative contraband," see *One 1958 Plymouth Sedan*, 380 U. S., at 699. Forfeiture is more problematic for this category of property than for the first two, both because of its potentially far broader sweep, and because the government's remedial interest in confiscation is less apparent. Many of our earliest cases arising out of these kinds of seizures involved ships that engaged in piracy on the high seas,[2] in the slave trade,[3] or in the smuggling of cargoes of goods into the United States.[4] These seizures by the sovereign

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[1] Without some form of an exception for innocent owners, the potential breadth of forfeiture actions for illegal proceeds would be breathtaking indeed. It has been estimated that nearly every United States bill in circulation—some $230 billion worth—carries trace amounts of cocaine, so great is the drug trade's appetite for cash. See Range & Witkin, The Drug-Money Hunt, U. S. News & World Report, Aug. 21, 1989, p. 22; Heilbroner, The Law Goes on a Treasure Hunt, N. Y. Times, Dec. 11, 1994, p. 70, col. 1. Needless to say, a rule of strict liability would have catastrophic effects for the Nation's economy.

[2] See, *e. g.*, *The Palmyra*, 12 Wheat. 1 (1827); *Harmony* v. *United States*, 2 How. 210 (1844). The latter case has occasionally been cited by other names, including "*Malek Adhel*," see O. Holmes, The Common Law 27, n. 82 (M. Howe ed. 1963).

[3] See, *e. g.*, *Tryphenia* v. *Harrison*, 24 F. Cas. 252 (No. 14,209) (CC Pa. 1806) (Washington, J.).

[4] See *C. J. Hendry Co.* v. *Moore*, 318 U. S. 133, 145–148 (1943) (collecting cases); *Harmony*, 2 How., at 233–234.

were approved despite the faultlessness of the ship's owner. Because the entire mission of the ship was unlawful, admiralty law treated the vessel itself as if it were the offender.[5] Moreover, under "the maritime law of the Middle Ages the ship was not only the source, but the limit, of liability."[6]

The early admiralty cases demonstrate that the law may reasonably presume that the owner of valuable property is aware of the principal use being made of that property. That presumption provides an adequate justification for the deprivation of one's title to real estate because of another's adverse possession for a period of years or for a seizure of such property because its principal use is unlawful. Thus, in *Dobbins's Distillery* v. *United States*, 96 U. S. 395, 399 (1878), we upheld the seizure of premises on which the lessee operated an unlawful distillery when the owner "knowingly suffer[ed] and permitt[ed] his land to be used as a site" for that distillery. And despite the faultlessness of their owners, we have upheld seizures of vehicles being used to trans-

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[5] "The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner. The vessel or boat (says the act of Congress) from which such piratical aggression, &c., shall have been first attempted or made shall be condemned. Nor is there any thing new in a provision of this sort. It is not an uncommon course in the admiralty, acting under the law of nations, to treat the vessel in which or by which, or by the master or crew thereof, a wrong or offence has been done as the offender, without any regard whatsoever to the personal misconduct or responsibility of the owner thereof. And this is done from the necessity of the case, as the only adequate means of suppressing the offence or wrong, or insuring an indemnity to the injured party. The doctrine also is familiarly applied to cases of smuggling and other misconduct under our revenue laws; and has been applied to other kindred cases, such as cases arising on embargo and non-intercourse acts. In short, the acts of the master and crew, in cases of this sort, bind the interest of the owner to the ship, whether he be innocent or guilty; and he impliedly submits to whatever the law denounces as a forfeiture attached to the ship by reason of their unlawful or wanton wrongs." *Ibid.*

[6] Holmes, The Common Law, at 27.

port bootleg liquor, or to smuggle goods into the United States in violation of our customs laws.[7]

While our historical cases establish the propriety of seizing a freighter when its entire cargo consists of smuggled goods, none of them would justify the confiscation of an ocean liner just because one of its passengers sinned while on board. See, *e. g.*, *Phile* v. *Ship Anna*, 1 Dall. 197, 206 (C. P. Phila. Cty. 1787) (holding that forfeiture of a ship was inappropriate if an item of contraband hidden on board was "a trifling thing, easily concealed, and which might fairly escape the notice of the captain"); *J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U. S. 505, 512 (1921) (expressing doubt about expansive forfeiture applications). The principal use of the car in this case was not to provide a site for petitioner's husband to carry out forbidden trysts. Indeed, there is no evidence in the record that the car had ever previously been used for a similar purpose. An isolated misuse of a stationary vehicle should not justify the forfeiture of an innocent owner's property on the theory that it constituted an instrumentality of the crime.

This case differs from our historical precedents in a second, crucial way. In those cases, the vehicles or the property actually facilitated the offenses themselves. See *id.*, at 513 (referring to "the adaptability of a particular form of property to an illegal purpose"); *Harmony* v. *United States*, 2 How. 210, 235 (1844). Our leading decisions on forfeited conveyances, for example, involved offenses of which transportation was an element. In *Van Oster* v. *Kansas*, 272 U. S. 465 (1926), for example, the applicable statute prohibited transportation of intoxicating liquor. See *id.*, at 466. See also *Carroll* v. *United States*, 267 U. S. 132, 136 (1925) (car

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[7] See, *e. g.*, *Van Oster* v. *Kansas*, 272 U. S. 465 (1926) (transportation); *J. W. Goldsmith, Jr.-Grant Co.* v. *United States*, 254 U. S. 505 (1921) (same); *General Motors Acceptance Corp.* v. *United States*, 286 U. S. 49 (1932) (importation); *United States* v. *Commercial Credit Co.*, 286 U. S. 63 (1932) (same).

had concealed compartments for carrying liquor). In *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663 (1974), similarly, a yacht was seized because it had been used "to transport, or to facilitate the transportation of," a controlled substance. See *id.*, at 665–666.[8] Here, on the other hand, the forfeited property bore no necessary connection to the offense committed by petitioner's husband. It is true that the act occurred in the car, but it might just as well have occurred in a multitude of other locations. The mobile character of the car played a part only in the negotiation, but not in the consummation, of the offense.

In recent years, a majority of the Members of this Court has agreed that the concept of an instrumentality subject to forfeiture—also expressed as the idea of "tainted" items—must have an outer limit. In *Austin*, the Court rejected the argument that a mobile home and auto body shop where an illegal drug transaction occurred were forfeitable as "instruments" of the drug trade. 509 U. S., at 621. JUSTICE SCALIA agreed that a building in which an isolated drug sale happens to take place also cannot be regarded as an instrumentality of that offense. *Id.*, at 627–628 (opinion concurring in part and concurring in judgment). JUSTICE THOMAS, too, has stated that it is difficult to see how real property bearing no connection to crime other than serving as the location for a drug transaction is in any way "guilty" of an offense. See *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 81–82 (1993) (opinion concurring in part and dissenting in part). The car in this case, however,

[8] The majority questions whether the yacht was actually used to transport drugs, quoting Justice Douglas' dissenting statement that "'so far as we know'" only one marijuana cigarette was found on board. See *ante*, at 450. Justice Douglas cited no source for that assertion, however, and it does not appear in the majority or concurring opinions. According to the stipulated facts of the case, the Commonwealth of Puerto Rico accused the lessee of using the yacht to "convey, transport, carry and transfer" a narcotic drug. See App. in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, O. T. 1973, No. 73–157, p. 25.

was used as little more than an enclosure for a one-time event, effectively no different from a piece of real property.[9] By the rule laid down in our recent cases, that nexus is insufficient to support the forfeiture here.

The State attempts to characterize this forfeiture as serving exclusively remedial, as opposed to punitive, ends, because its goal was to abate what the State termed a "nuisance." Even if the State were correct, that argument would not rebut the excessiveness of the forfeiture, which I have discussed above. But in any event, there is no serious claim that the confiscation in this case was not punitive. The majority itself concedes that "'forfeiture serves, at least in part, to punish the owner.'" *Ante*, at 451 (quoting *Austin*, 509 U. S., at 618).[10] At an earlier stage of this litigation,

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[9] In fact, the rather tenuous theory advanced by the Michigan Supreme Court to uphold this forfeiture was that the neighborhood where the offense occurred exhibited an ongoing "nuisance condition" because it had a reputation for illicit activity, and the car contributed to that "condition." 447 Mich. 719, 734, 527 N. W. 2d 483, 491 (1994). On that view, the car did not constitute the nuisance of itself; only when considered as a part of the particular neighborhood did it assume that character. See *id.*, at 745, 527 N. W. 2d, at 496 (Cavanagh, C. J., dissenting). One bizarre consequence of this theory, expressly endorsed by the Michigan high court, is that the very same offense, committed in the very same car, would not render the car forfeitable if it were parked in a different part of Detroit, such as the affluent Palmer Woods area. See *id.*, at 734, n. 22, 527 N. W. 2d, at 491, n. 22. This construction confirms the irrelevance of the car's mobility to the forfeiture; any other stationary part of the neighborhood where such an offense could take place—a shed, for example, or an apartment—could be forfeited on the same rationale. Indeed, if petitioner's husband had taken advantage of the car's power of movement, by picking up the prostitute and continuing to drive, presumably the car would not have been forfeitable at all.

[10] We have held, furthermore, that "a civil sanction that cannot be said *solely* to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term." *United States* v. *Halper*, 490 U. S. 435, 448 (1989) (emphasis added).

the State unequivocally argued that confiscation of automobiles in the circumstances of this case "is swift and certain 'punishment' of the voluntary vice consumer." Brief for Plaintiff-Appellant in No. 97339 (Mich.), p. 22. Therefore, the idea that this forfeiture did not punish petitioner's husband—and, *a fortiori*, petitioner herself—is simply not sustainable.

Even judged in isolation, the remedial interest in this forfeiture falls far short of that which we have found present in other cases. Forfeiture may serve remedial ends when removal of certain items (such as a burglar's tools) will prevent repeated violations of the law (such as housebreaking). See, *e. g.*, *United States* v. *One Assortment of 89 Firearms*, 465 U. S. 354, 364 (1984) (confiscation of unregistered shotguns); see also *C. J. Hendry Co.* v. *Moore*, 318 U. S. 133 (1943) (seizure of fishing nets used in violation of state fishing laws). But confiscating petitioner's car does not disable her husband from using other venues for similar illegal rendezvous, since all that is needed to commit this offense is a place. In fact, according to testimony at trial, petitioner's husband had been sighted twice during the previous summer, without the car, soliciting prostitutes in the same neighborhood.[11] The remedial rationale is even less convincing according to the State's "nuisance" theory, for that theory treats the car as a nuisance only so long as the illegal event is occurring and only so long as the car is located in the relevant neighborhood. See n. 9, *supra*. The need to "abate" the car thus disappears the moment it leaves the area. In short, therefore, a remedial justification simply does not apply to a confiscation of this type. See generally Clark, Civil and Criminal Penalties and Forfeitures: A Framework for Constitutional Analysis, 60 Minn. L. Rev. 379, 479–480 (1976).

[11] The forfeited car was purchased in September of the same year, and thus could not have been involved in any such episodes during the preceding summer. See App. 8; 447 Mich., at 728, 527 N. W. 2d, at 488.

II

Apart from the lack of a sufficient nexus between petitioner's car and the offense her husband committed, I would reverse because petitioner is entirely without responsibility for that act. Fundamental fairness prohibits the punishment of innocent people.

The majority insists that it is a settled rule that the owner of property is strictly liable for wrongful uses to which that property is put. See *ante*, at 446–450. Only three Terms ago, however, the Court surveyed the same historical antecedents and held that all of its forfeiture decisions rested, "at bottom, on the notion that the owner has been negligent in allowing his property to be misused and that he is properly punished for that negligence." *Austin* v. *United States*, 509 U. S., at 615 (citing *Calero-Toledo*, *Goldsmith-Grant Co.*, *Dobbins's Distillery*, *Harmony*, and *The Palmyra*). According to *Austin*, even the hoary fiction that property was forfeitable because of its own guilt was based on the idea that "'"such misfortunes are in part owing to the negligence of the owner, and therefore he is properly punished by the forfeiture."'" 509 U. S., at 616, quoting *Goldsmith-Grant Co.*, 254 U. S., at 510–511, in turn quoting 1 W. Blackstone, Commentaries *301. It is conceded that petitioner was in no way negligent in her use or entrustment of the family car. Thus, no forfeiture should have been permitted. The majority, however, simply ignores *Austin*'s detailed analysis of our case law without explanation or comment.

Even assuming that strict liability applies to "innocent" owners, we have consistently recognized an exception for truly blameless individuals. The Court's opinion in *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S., at 688–690, established the proposition that the Constitution bars the punitive forfeiture of property when its owner alleges and proves that he took all reasonable steps to prevent its illegal use. Accord, *Austin*, 509 U. S., at 616–617. The majority

dismisses this statement as "*obiter dictum*," *ante*, at 450, but we have assumed that such a principle existed, or expressly reserved the question, in a line of cases dating back nearly 200 years. In one of its earliest decisions, the Court, speaking through Chief Justice Marshall, recognized as "unquestionably a correct legal principle" that "a forfeiture can only be applied to those cases in which the means that are prescribed for the prevention of a forfeiture may be employed." *Peisch* v. *Ware*, 4 Cranch 347, 363 (1808).[12] In other contexts, we have regarded as axiomatic that persons cannot be punished when they have done no wrong. See *Southwestern Telegraph & Telephone Co.* v. *Danaher*, 238 U. S. 482, 490–491 (1915) (invalidating penalty under Due Process

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[12] In *Peisch*, a ship was wrecked in Delaware Bay and its cargo unladen and carried off by salvors. The United States sought forfeiture of the cargo on several grounds, including failure to pay duties on certain distilled spirits in the cargo at the time of importation, and removal of the same from the tax collector before assessment. This Court held that forfeiture was impermissible because the ship's owners were unable to comply with the customs law regarding importation, since the crew had deserted the ship before landing, and the vessel could not be brought into port. 4 Cranch, at 363. As quoted above, the Court held that forfeiture is inappropriate when the means to prevent the violation cannot be carried out.

As a separate reason for rejecting the forfeiture, the Court explained that the owners could not be made to suffer for actions taken by the salvors, persons over whom the owners had no control. As the Court put it, an owner should not be "punished" by the forfeiture of property taken "by private theft, or open robbery, without any fault on his part . . . ." *Id.*, at 364. That rule has itself become an established part of our jurisprudence. See *Austin*, 509 U. S., at 614–615; *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663, 688–690 (1974); *Goldsmith-Grant Co.*, 254 U. S., at 512; *United States* v. *One Ford Coupe Automobile*, 272 U. S. 321, 333 (1926); *Van Oster* v. *Kansas*, 272 U. S., at 467. While both of the principles announced in *Peisch* arose out of the same set of facts, the majority errs when it treats them as identical. See *ante*, at 448–449, n. 5. Chief Justice Marshall's opinion discussed and justified each principle independently, and either could apply in the absence of the other.

Clause for conduct that involved "no intentional wrongdoing; no departure from any prescribed or known standard of action, and no reckless conduct"); *TXO Production Corp.* v. *Alliance Resources Corp.*, 509 U. S. 443, 454, and n. 17 (1993) (following *Danaher*); *Bordenkircher* v. *Hayes*, 434 U. S. 357, 363 (1978); see also *Bell* v. *Wolfish*, 441 U. S. 520, 580 (1979) (STEVENS, J., dissenting). I would hold now what we have always assumed: that the principle is required by due process.

The unique facts of this case demonstrate that petitioner is entitled to the protection of that rule. The subject of this forfeiture was certainly not contraband. It was not acquired with the proceeds of criminal activity and its principal use was entirely legitimate. It was an ordinary car that petitioner's husband used to commute to the steel mill where he worked. Petitioner testified that they had been married for nine years; that she had acquired her ownership interest in the vehicle by the expenditure of money that she had earned herself; that she had no knowledge of her husband's plans to do anything with the car except "come directly home from work," as he had always done before; and that she even called "Missing Persons" when he failed to return on the night in question. App. 8–10. Her testimony is not contradicted and certainly is credible. Without knowledge that he would commit such an act in the family car, or that he had ever done so previously, surely petitioner cannot be accused of failing to take "reasonable steps" to prevent the illicit behavior. She is just as blameless as if a thief, rather than her husband, had used the car in a criminal episode.

While the majority admits that this forfeiture is at least partly punitive in nature, it asserts that Michigan's law also serves a "deterrent purpose distinct from any punitive purpose." *Ante*, at 452. But that is no distinction at all; deterrence is itself one of the aims of punishment. *United States*

v. *Halper*, 490 U. S. 435, 448 (1989).[13] Even on a deterrence rationale, moreover, that goal is not fairly served in the case of a person who has taken all reasonable steps to prevent an illegal act.

Forfeiture of an innocent owner's property that plays a central role in a criminal enterprise may be justified on reasoning comparable to the basis for imposing liability on a principal for an agent's torts. Just as the risk of *respondeat superior* liability encourages employers to supervise more closely their employees' conduct, see *Arizona* v. *Evans*, 514 U. S. 1, 29, n. 5 (1995) (GINSBURG, J., dissenting), so the risk of forfeiture encourages owners to exercise care in entrusting their property to others, see *Calero-Toledo*, 416 U. S., at 687; *ante*, at 452. But the law of agency recognizes limits on the imposition of vicarious liability in situations where no deterrent function is likely to be served; for example, it exonerates the employer when the agent strays from his intended mission and embarks on a "frolic of his own." See also *United States* v. *Park*, 421 U. S. 658, 673 (1975) (vicarious criminal liability for corporate officer based on company's conduct impermissible if officer was "'powerless' to prevent or correct the violation") (citation omitted). In this case, petitioner did not "entrust" the car to her husband on the night in question; he was entitled to use it by virtue of their joint ownership. There is no reason to think that the threat

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[13] For that reason, the majority's attempt to analogize this forfeiture to the system of tort liability for automobile accidents is unpersuasive. See *ante*, at 452. Tort law is tied to the goal of compensation (punitive damages being the notable exception), while forfeitures are concededly punitive. The fundamental difference between these two regimes has long been established. "The law never punishes any man criminally but for his own act, yet it frequently punishes him in his pocket, for the act of another. Thus, if a wife commits an offence, the husband is not liable to the penalties; but if she obtains the property of another by any means not felonious, he must make the payment and amends." *Phile* v. *Ship Anna*, 1 Dall. 197, 207 (C. P. Phila. Cty. 1787). The converse, of course, is true as well.

of forfeiture will deter an individual from buying a car with her husband—or from marrying him in the first place—if she neither knows nor has reason to know that he plans to use it wrongfully.

The same is true of the second asserted justification for strict liability, that it relieves the State of the difficulty of proving collusion, or disproving the lack thereof, by the alleged innocent owner and the wrongdoer. See *ante*, at 452 (citing *Van Oster* v. *Kansas*, 272 U. S., at 467–468). Whatever validity that interest might have in another kind of case, it has none here. It is patently clear that petitioner did not collude with her husband to carry out *this* offense.

The absence of any deterrent value reinforces the punitive nature of this forfeiture law. But petitioner has done nothing that warrants punishment. She cannot be accused of negligence or of any other dereliction in allowing her husband to use the car for the wholly legitimate purpose of transporting himself to and from his job. She affirmatively alleged and proved that she is not in any way responsible for the conduct that gave rise to the seizure. If anything, she was a *victim* of that conduct. In my opinion, these facts establish that the seizure constituted an arbitrary deprivation of property without due process of law.[14]

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[14] JUSTICE GINSBURG argues that Michigan should not be rebuked for its efforts to deter prostitution, see *ante*, at 457–458, but none of her arguments refutes the fact that the State has accomplished its ends by sacrificing the rights of an innocent person. First, the concession that the car itself may be confiscated provides no justification for the forfeiture of the co-owner's separate interest. Second, the assertion that the Michigan Supreme Court "stands ready to police exorbitant applications of the statute," *ibid.*, has a hollow ring because it failed to do so in this case. That court did not even mention the relevance of innocence to the trial court's exercise of its "equitable discretion." Rather, it stated flatly that "Mrs. Bennis' claim is without constitutional consequence." 447 Mich., at 741, 527 N. W. 2d, at 494. Third, the blatant unfairness of using petitioner's property to compensate for her husband's offense is not diminished by its modest value. It is difficult, moreover, to credit the trial court's statement that it would have awarded the proceeds of the sale to petitioner if

III

The Court's holding today is dramatically at odds with our holding in *Austin* v. *United States*. We there established that when a forfeiture constitutes "payment to a sovereign as punishment for some offense"—as it undeniably does in this case—it is subject to the limitations of the Eighth Amendment's Excessive Fines Clause. For both of the reasons I have already discussed, the forfeiture of petitioner's half interest in her car is surely a form of "excessive" punishment. For an individual who merely let her husband use her car to commute to work, even a modest penalty is out of all proportion to her blameworthiness; and when the assessment is confiscation of the entire car, simply because an illicit act took place once in the driver's seat, the punishment is plainly excessive. This penalty violates the Eighth Amendment for yet another reason. Under the Court's reasoning, the value of the car is irrelevant. A brand-new luxury sedan or a 10-year-old used car would be equally forfeitable. We have held that "dramatic variations" in the value of conveyances subject to forfeiture actions undercut any argument that the latter are reasonably tied to remedial ends. See *Austin*, 509 U. S., at 621; *United States* v. *Ward*, 448 U. S. 242, 254 (1980).

I believe the Court errs today by assuming that the power to seize property is virtually unlimited and by implying that our opinions in *Calero-Toledo* and *Austin* were misguided. Some 75 years ago, when presented with the argument that the forfeiture scheme we approved had no limit, we insisted that expansive application of the law had not yet come to pass. "When such application shall be made," we said, "it will be time enough to pronounce upon it." *Goldsmith-*

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they had been larger, for it expressly ordered that any remaining balance go to the State's coffers. See App. 28. Finally, the State's decision to deter "johns from using cars *they* own (or co-own) to contribute to neighborhood blight," *ante*, at 458 (emphasis added), surely does not justify the forfeiture of that share of the car owned by an innocent spouse.

Grant Co., 254 U. S., at 512. That time has arrived when the State forfeits a woman's car because her husband has secretly committed a misdemeanor inside it. While I am not prepared to draw a bright line that will separate the permissible and impermissible forfeitures of the property of innocent owners, I am convinced that the blatant unfairness of this seizure places it on the unconstitutional side of that line.

I therefore respectfully dissent.

JUSTICE KENNEDY, dissenting.

The forfeiture of vessels pursuant to the admiralty and maritime law has a long, well-recognized tradition, evolving as it did from the necessity of finding some source of compensation for injuries done by a vessel whose responsible owners were often half a world away and beyond the practical reach of the law and its processes. See *Harmony* v. *United States*, 2 How. 210, 233 (1844); *Republic Nat. Bank of Miami* v. *United States*, 506 U. S. 80, 87–88 (1992). The prospect of deriving prompt compensation from *in rem* forfeiture, and the impracticality of adjudicating the innocence of the owners or their good-faith efforts in finding a diligent and trustworthy master, combined to eliminate the owner's lack of culpability as a defense. See *Harmony* v. *United States*, *supra*, at 233. Those realities provided a better justification for forfeiture than earlier, more mechanistic rationales. Cf. *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663, 680–681 (1974) (discussing deodands). The tradeoff, of course, was that the owner's absolute liability was limited to the amount of the vessel and (or) its cargo. For that reason, it seems to me inaccurate, or at least not well supported, to say that the owner's personal culpability was part of the forfeiture rationale. *Austin* v. *United States*, 509 U. S. 602, 625 (1993) (SCALIA, J., concurring in part and concurring in judgment); *id.*, at 628–629 (KENNEDY, J., concurring in part and concurring in judgment). As JUSTICE STEVENS observes, however, *ante*, at 466–467, even the well-recognized

tradition of forfeiture in admiralty has not been sufficient for an unequivocal confirmation from this Court that a vessel in all instances is seizable when it is used for criminal activity without the knowledge or consent of the owner, see *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, *supra*, at 688–690. Cf. *The William Bagaley*, 5 Wall. 377, 410–411 (1867) (discussing English cases holding knowledge or culpability relevant to the forfeiture of a cargo owner's interest).

We can assume the continued validity of our admiralty forfeiture cases without in every analogous instance extending them to the automobile, which is a practical necessity in modern life for so many people. At least to this point, it has not been shown that a strong presumption of negligent entrustment or criminal complicity would be insufficient to protect the government's interest where the automobile is involved in a criminal act in the tangential way that it was here. Furthermore, as JUSTICE STEVENS points out, *ante*, at 462–463, the automobile in this case was not used to transport contraband, and so the seizure here goes beyond the line of cases which sustain the government's use of forfeiture to suppress traffic of that sort.

This forfeiture cannot meet the requirements of due process. Nothing in the rationale of the Michigan Supreme Court indicates that the forfeiture turned on the negligence or complicity of petitioner, or a presumption thereof, and nothing supports the suggestion that the value of her co-ownership is so insignificant as to be beneath the law's protection.

For these reasons, and with all respect, I dissent.

Per Curiam

DALTON, DIRECTOR, ARKANSAS DEPARTMENT OF HUMAN SERVICES ET AL. *v.* LITTLE ROCK FAMILY PLANNING SERVICES ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 95–1025. Decided March 18, 1996

Respondents, Medicaid providers and physicians who perform abortions in Arkansas, filed this suit against petitioner state officials, claiming that Amendment 68 of the State Constitution, § 1 of which prohibits using state funds to pay for any abortion except one to save the mother's life, conflicts with a requirement in Title XIX of the Social Security Act, as amended by the 1994 version of the "Hyde Amendment," that States fund abortions where the pregnancy resulted from an act of rape or incest. The District Court, *inter alia*, enjoined enforcement of the amendment in its entirety for so long as the State accepts federal Medicaid funds. The Eighth Circuit affirmed.

Held: Amendment 68 can be enjoined only to the extent that it imposes obligations inconsistent with Title XIX. In a pre-emption case such as this, state law is displaced only to the extent that it actually conflicts with federal law. *Pacific Gas & Elec. Co.* v. *State Energy Resources Conservation and Development Comm'n*, 461 U. S. 190, 204. Because Amendment 68 was challenged only insofar as it conflicted with Title XIX, it was improper to enjoin its application to funding that does not involve the Medicaid program. The injunction is overbroad in its temporal scope as well. The Hyde Amendment is not permanent legislation; it was enacted as part of the appropriation of funds for certain Executive Departments for one fiscal year. Its history—before 1994, it limited federal funding to those abortions necessary to save the mother's life—identifies the possibility that a different version may be enacted in the future. Thus, it was improper for the District Court to enjoin Amendment 68's enforcement for so long as the State accepted federal Medicaid funds.

PER CURIAM.

Respondents in this case are Medicaid providers and physicians who perform abortions in the State of Arkansas. In November 1993, they filed suit against petitioners, who are Arkansas state officials, seeking injunctive and declaratory

relief with respect to Amendment 68 of the Arkansas Constitution, § 1 of which prohibits the use of state funds to pay for any abortion "except to save the mother's life." Their claim was that this provision is inconsistent with a requirement in Title XIX of the Social Security Act, 79 Stat. 343, as amended, 42 U. S. C. § 1396 *et seq.*, as affected by the 1994 version of the "Hyde Amendment," that States fund medically necessary abortions where the pregnancy resulted from an act of rape or incest.[1] The United States District Court for the Eastern District of Arkansas granted summary judgment for respondents and enjoined Amendment 68; the United States Court of Appeals for the Eighth Circuit affirmed. 60 F. 3d 497 (1995). Petitioners sought certiorari with respect to two aspects of the case: (1) the District Court's holding that "[u]nder the Hyde Amendment . . . federal law requires Arkansas and other states that participate in the federal Medicaid program to pay for abortions in cases where pregnancy is the result of rape or incest, as well as abortions to save the mother's life," 860 F. Supp. 609, 612 (1994), and (2) the District Court's enjoining of Amendment 68 "*in its entirety* for so long as the State of Arkansas accepts federal funds pursuant to the Medicaid Act," *id.*, at 628 (emphasis added).[2] We grant certiorari as to the second

[1] The 1994 Hyde Amendment, so named for its sponsor, Representative Henry Hyde of Illinois, was enacted as § 509 of the Department of Labor Appropriations Act, 1994, 107 Stat. 1082. Section 509 directs that "[n]one of the funds appropriated under this Act shall be expended for any abortion except when it is made known to the Federal entity or official to which funds are appropriated under this Act that such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest." 107 Stat. 1113. The provision was reenacted unchanged for fiscal year 1995. See 108 Stat. 2539.

[2] Any uncertainty as to the scope of the District Court's injunction was erased by a subsequent order denying petitioners' motion for stay of judgment. The order declares that "Amendment 68 to the Arkansas Constitution directly conflicts with federal law (the 1994 Hyde Amendment) and is, therefore, null, void and of no effect." App. to Pet. for Cert. D–2. A footnote to this sentence states: "The Court apologizes for the redundancy,

of these questions. Accepting (without deciding) that the District Court's interpretation of the Hyde Amendment is correct, we reverse the decision below insofar as it affirms blanket invalidation of Amendment 68.

In a pre-emption case such as this, state law is displaced only "to the extent that it actually conflicts with federal law." *Pacific Gas & Elec. Co.* v. *State Energy Resources Conservation and Development Comm'n*, 461 U. S. 190, 204 (1983). See, *e. g.*, *Gade* v. *National Solid Wastes Management Assn.*, 505 U. S. 88, 109 (1992); *Exxon Corp.* v. *Hunt*, 475 U. S. 355, 376 (1986). "[T]he rule [is] that a federal court should not extend its invalidation of a statute further than necessary to dispose of the case before it." *Brockett* v. *Spokane Arcades, Inc.*, 472 U. S. 491, 502 (1985).

Amendment 68 reads as follows:

> "§ 1. Public funding. No public funds will be used to pay for any abortion, except to save the mother's life.
>
> "§ 2. Public policy. The policy of Arkansas is to protect the life of every unborn child from conception until birth, to the extent permitted by the Federal Constitution.
>
> "§ 3. Effect of amendment. This amendment will not affect contraceptives or require an appropriation of public funds."

Section 1 of this provision is affected by the lower courts' interpretation of Title XIX and the 1994 Hyde Amendment only in cases where a Medicaid-eligible woman seeks to abort a pregnancy resulting from an act of rape or incest and the abortion is not necessary to save the woman's life. Respondents do not claim that any other possible application of § 1 is pre-empted by current federal law. It is entirely possible, for example, that § 1 would have application to state programs that receive no federal funding. As the District

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but, apparently the Court's 35-page order rendered Monday, last, did not make this point clear." *Ibid.*

Court noted, the Arkansas Crime Victims Reparations Act, Ark. Code Ann. § 16–90–701 *et seq.* (Supp. 1995), established a program which provides compensation and assistance to victims of criminal acts within the State, including compensation for medical expenses, see § 16–90–703(7). Without the limitation imposed by Amendment 68, the program might have the authority to reimburse crime victims for abortions not necessary to save the life of the pregnant woman. Assuming the compensation program is entirely state funded, nothing in respondents' challenge to Amendment 68 suggests that the application of § 1 to the program would conflict with any federal statute. Because Amendment 68 was challenged only insofar as it conflicted with Title XIX, it was improper to enjoin its application to funding that does not involve the Medicaid program.

The District Court's injunction is overbroad in its temporal scope as well. The Hyde Amendment is not permanent legislation; it was enacted as part of the statute appropriating funds for certain Executive Departments for one fiscal year. While the versions of the Hyde Amendment applicable to the 1994 and 1995 fiscal years authorized the use of federal funds to pay for an abortion after notice that "such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest," the version of the amendment applicable to prior years limited federal funding to those abortions necessary to save the life of the mother. See, *e. g.*, § 203, Department of Labor Appropriations Act, 1993, 106 Stat. 1811. Because this history identifies the possibility that a different version of the Hyde Amendment may be enacted in the future, it was improper for the District Court to enjoin enforcement of Amendment 68 "for so long as the State of Arkansas accepts federal funds pursuant to the Medicaid Act." 860 F. Supp., at 628. See *Planned Parenthood Affiliates of Michigan* v. *Engler*, 73 F. 3d 634, 641 (CA6 1996) (modifying injunction in similar case to "tak[e] into account the changeable nature of spending

bills in general, and the Hyde Amendment in particular, which in some years are very restrictive and in other years are less so").

The District Court's invalidation of §§2 and 3 of the amendment was based on the proposition that these sections "have no function independent of" §1. 860 F. Supp., at 626. Even assuming that to be true, once §1 is left with the substantial application that the Supremacy Clause fully allows, §§2 and 3 subsist as well.

We therefore reverse the decision of the Eighth Circuit insofar as it affirms the scope of the injunction, and remand for entry of an order enjoining the enforcement of Amendment 68 only to the extent that the amendment imposes obligations inconsistent with federal law.

It is so ordered.

Syllabus

MEGHRIG ET AL. *v.* KFC WESTERN, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95–83. Argued January 10, 1996—Decided March 19, 1996

Three years after complying with a county order to clean up petroleum contamination discovered on its property, respondent KFC Western, Inc., brought this action under the citizen suit provision of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U. S. C. § 6972(a), to recover its cleanup costs from petitioners, the Meghrigs. KFC claimed, among other things, that the contamination had previously posed an "imminent and substantial endangerment to health or the environment," see § 6972(a)(1)(B), and that the Meghrigs were responsible for "equitable restitution" under § 6972(a) because, as prior owners of the property, they had contributed to the contaminated site. The District Court dismissed the complaint, holding that § 6972(a) does not permit recovery of past cleanup costs and that § 6972(a)(1)(B) does not authorize a cause of action for the remediation of toxic waste that does not pose an "imminent and substantial endangerment" at the time suit is filed. The Ninth Circuit disagreed on both points and reversed.

Held: Section 6972 does not authorize a private cause of action to recover the prior cost of cleaning up toxic waste that does not, at the time of suit, continue to pose an endangerment to health or the environment. Pp. 483–488.

(a) A private party cannot recover the cost of a past cleanup effort under § 6972(a), which authorizes district courts "*to restrain* any person [responsible for toxic waste], *to order such person to take such other action as may be necessary*, or both." (Emphasis added.) Under a plain reading of this remedial scheme, a citizen plaintiff could seek a mandatory injunction that orders a responsible party to "take action" by attending to the cleanup and proper disposal of waste, or a prohibitory injunction that "restrains" a responsible party from further violating RCRA. Neither remedy, however, contemplates the award of past cleanup costs, whether denominated "damages" or "equitable restitution." A comparison with the relief provided in the analogous, but not parallel, provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 demonstrates that Congress knows how to provide for the recovery of past cleanup costs, and that § 6972(a) does not provide that remedy. Pp. 483–485.

Syllabus

(b) Section 6972(a)(1)(B)—which permits citizen suits against persons responsible for "waste which *may present* an *imminent* and substantial endangerment to health or the environment" (emphasis added)—does not authorize a suit based upon an allegation that the contaminated site posed such an endangerment at some time in the past. This timing restriction's plain meaning demonstrates that an endangerment can only be "imminent" if it threatens to occur immediately, and the reference to waste which "may present" imminent harm quite clearly excludes waste that no longer presents such a danger. This language implies that there must be a threat which is present *now*, although the impact of the threat may not be felt until later. It follows that § 6972(a) was designed to provide a remedy that ameliorates present or obviates the risk of future "imminent" harms, not a remedy that compensates for past cleanup efforts. Other aspects of RCRA's enforcement scheme strongly support this conclusion, and the existence of such an elaborate scheme refutes the Government's contention that district courts may award past cleanup costs under their inherent equitable remedial authority. Pp. 485–488.

(c) This Court does not consider whether a private party could seek to obtain an injunction requiring another party to pay cleanup costs arising after a RCRA citizen suit has been properly commenced. P. 488.

49 F. 3d 518, reversed.

O'CONNOR, J., delivered the opinion for a unanimous Court.

John P. Zaimes argued the cause and filed briefs for petitioners.

Jeffrey P. Minear argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Days, Assistant Attorney General Schiffer, Deputy Solicitor General Wallace, Anne S. Almy,* and *John T. Stahr.*

Daniel Romano argued the cause and filed a brief for respondent.*

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*Briefs of *amici curiae* urging reversal were filed for the Petroleum Marketers Association of America by *Alphonse M. Alfano* and *Robert S. Bassman;* for the Southern California Service Station Association by *Dimitri G. Daskalopoulos;* and for the Western States Petroleum Association by *Donna R. Black.*

Briefs of *amici curiae* urging affirmance were filed for the Commonwealth of Massachusetts et al. by *Scott Harshbarger,* Attorney General of

JUSTICE O'CONNOR delivered the opinion of the Court.

We consider whether § 7002 of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U. S. C. § 6972, authorizes a private cause of action to recover the prior cost of cleaning up toxic waste that does not, at the time of suit, continue to pose an endangerment to health or the environment. We conclude that it does not.

I

Respondent KFC Western, Inc. (KFC), owns and operates a "Kentucky Fried Chicken" restaurant on a parcel of property in Los Angeles. In 1988, KFC discovered during the course of a construction project that the property was contaminated with petroleum. The County of Los Angeles Department of Health Services ordered KFC to attend to the problem, and KFC spent $211,000 removing and disposing of the oil-tainted soil.

Three years later, KFC brought this suit under the citizen suit provision of RCRA, 90 Stat. 2825, as amended, 42

Massachusetts, and *William L. Pardee*, *John Beling*, and *Karen McGuire*, Assistant Attorneys General, *Jeremiah W. Nixon*, Attorney General of Missouri, and *James Layton*, *Joseph P. Bindbeutel*, and *Douglas E. Nelson*, Assistant Attorneys General, and by the Attorneys General of their respective jurisdictions as follows: *Bruce M. Botelho* of Alaska, *Calvin E. Holloway* of Guam, *Chris Gorman* of Kentucky, *Frankie Sue Del Papa* of Nevada, *Tom Udall* of New Mexico, *Darrell V. McGraw, Jr.*, of West Virginia, *Robert A. Butterworth* of Florida, *Carla Stolla* of Kansas, *Richard P. Ieyoub* of Louisiana, *Deborah T. Poritz* of New Jersey, *Dennis C. Vacco* of New York, and *James E. Doyle* of Wisconsin; for the State of Louisiana through its Department of Transportation and Development by *William M. Hudson III*, *Edgar D. Gankendorff*, *Lawrence A. Durant*, *James M. Bookter*, and *Charley Hutchens;* for the Bi-State Development Agency of the Missouri-Illinois Metropolitan District by *Timothy W. Burns*, *Jerome M. Organ*, *John Fox Arnold*, and *Nelson G. Wolff;* and for Kaufman and Broad Home Corp. et al. by *William N. Kammer* and *Robert C. Longstreth*.

U. S. C. § 6972(a),* seeking to recover these cleanup costs from petitioners Alan and Margaret Meghrig.

KFC claimed that the contaminated soil was a "solid waste" covered by RCRA, see 42 U. S. C. § 6903(27), that it had previously posed an "imminent and substantial endangerment to health or the environment," see § 6972(a)(1)(B), and that the Meghrigs were responsible for "equitable restitution" of KFC's cleanup costs under § 6972(a) because, as prior owners of the property, they had contributed to the waste's "past or present handling, storage, treatment, transportation, or disposal." See App. 12–19 (first amended complaint).

The District Court held that § 6972(a) does not permit recovery of past cleanup costs and that § 6972(a)(1)(B) does not authorize a cause of action for the remediation of toxic waste that does not pose an "imminent and substantial endangerment to health or the environment" at the time suit is filed, and dismissed KFC's complaint. App. to Pet. for Cert. A21–A23. The Court of Appeals for the Ninth Circuit reversed, over a dissent, 49 F. 3d 518, 524–528 (1995) (Brunetti, J.), finding that a district court had authority under § 6972(a) to award restitution of past cleanup costs, *id.*, at 521–523, and

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*Section 6972(a) provides, in relevant part:

"Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

. . . . . .

"(1)(B) against any person, including . . . any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment . . . .

. . . . . .

". . . The district court shall have jurisdiction . . . to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both . . . ."

that a private party can proceed with a suit under § 6972(a)(1)(B) upon an allegation that the waste at issue presented an "imminent and substantial endangerment" at the time it was cleaned up, *id.*, at 520–521.

The Ninth Circuit's conclusion regarding the remedies available under RCRA conflicts with the decision of the Court of Appeals for the Eighth Circuit in *Furrer* v. *Brown*, 62 F. 3d 1092, 1100–1101 (1995), and its interpretation of the "imminent endangerment" requirement represents a novel application of federal statutory law. We granted certiorari to address the conflict between the Circuits and to consider the correctness of the Ninth Circuit's interpretation of RCRA, 515 U. S. 1192 (1995), and now reverse.

II

RCRA is a comprehensive environmental statute that governs the treatment, storage, and disposal of solid and hazardous waste. See *Chicago* v. *Environmental Defense Fund*, 511 U. S. 328, 331–332 (1994). Unlike the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 94 Stat. 2767, as amended, 42 U. S. C. § 9601 *et seq.*, RCRA is not principally designed to effectuate the cleanup of toxic waste sites or to compensate those who have attended to the remediation of environmental hazards. Cf. *General Electric Co.* v. *Litton Industrial Automation Systems, Inc.*, 920 F. 2d 1415, 1422 (CA8 1990) (the "two . . . main purposes of CERCLA" are "prompt cleanup of hazardous waste sites and imposition of all cleanup costs on the responsible party"). RCRA's primary purpose, rather, is to reduce the generation of hazardous waste and to ensure the proper treatment, storage, and disposal of that waste which is nonetheless generated, "so as to minimize the present and future threat to human health and the environment." 42 U. S. C. § 6902(b).

Chief responsibility for the implementation and enforcement of RCRA rests with the Administrator of the Environ-

mental Protection Agency (EPA), see §§ 6928, 6973, but like other environmental laws, RCRA contains a citizen suit provision, § 6972, which permits private citizens to enforce its provisions in some circumstances.

Two requirements of § 6972(a) defeat KFC's suit against the Meghrigs. The first concerns the necessary timing of a citizen suit brought under § 6972(a)(1)(B): That section permits a private party to bring suit against certain responsible persons, including former owners, "who ha[ve] contributed or who [are] contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which *may present* an *imminent* and substantial endangerment to health or the environment." (Emphasis added.) The second defines the remedies a district court can award in a suit brought under § 6972(a)(1)(B): Section 6972(a) authorizes district courts "*to restrain* any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste . . . , *to order such person to take such other action as may be necessary*, or both." (Emphasis added.)

It is apparent from the two remedies described in § 6972(a) that RCRA's citizen suit provision is not directed at providing compensation for past cleanup efforts. Under a plain reading of this remedial scheme, a private citizen suing under § 6972(a)(1)(B) could seek a mandatory injunction, *i. e.*, one that orders a responsible party to "take action" by attending to the cleanup and proper disposal of toxic waste, or a prohibitory injunction, *i. e.*, one that "restrains" a responsible party from further violating RCRA. Neither remedy, however, is susceptible of the interpretation adopted by the Ninth Circuit, as neither contemplates the award of past cleanup costs, whether these are denominated "damages" or "equitable restitution."

In this regard, a comparison between the relief available under RCRA's citizen suit provision and that which Congress

has provided in the analogous, but not parallel, provisions of CERCLA is telling. CERCLA was passed several years after RCRA went into effect, and it is designed to address many of the same toxic waste problems that inspired the passage of RCRA. Compare 42 U. S. C. § 6903(5) (RCRA definition of "hazardous waste") and § 6903(27) (RCRA definition of "solid waste") with § 9601(14) (CERCLA provision incorporating certain "hazardous substance[s]," but specifically excluding petroleum). CERCLA differs markedly from RCRA, however, in the remedies it provides. CERCLA's citizen suit provision mimics § 6972(a) in providing district courts with the authority "to order such action as may be necessary to correct the violation" of any CERCLA standard or regulation. 42 U. S. C. § 9659(c). But CERCLA expressly permits the Government to recover "all costs of removal or remedial action," § 9607(a)(4)(A), and it expressly permits the recovery of any "necessary costs of response, incurred by any . . . person consistent with the national contingency plan," § 9607(a)(4)(B). CERCLA also provides that "[a]ny person may seek contribution from any other person who is liable or potentially liable" for these response costs. See § 9613(f)(1). Congress thus demonstrated in CERCLA that it knew how to provide for the recovery of cleanup costs, and that the language used to define the remedies under RCRA does not provide that remedy.

That RCRA's citizen suit provision was not intended to provide a remedy for past cleanup costs is further apparent from the harm at which it is directed. Section 6972(a)(1)(B) permits a private party to bring suit only upon a showing that the solid or hazardous waste at issue "may present an imminent and substantial endangerment to health or the environment." The meaning of this timing restriction is plain: An endangerment can only be "imminent" if it "threaten[s] to occur immediately," Webster's New International Dictionary of English Language 1245 (2d ed. 1934), and the refer-

ence to waste which "may present" imminent harm quite clearly excludes waste that no longer presents such a danger. As the Ninth Circuit itself intimated in *Price* v. *United States Navy*, 39 F. 3d 1011, 1019 (1994), this language "implies that there must be a threat which is present *now*, although the impact of the threat may not be felt until later." It follows that § 6972(a) was designed to provide a remedy that ameliorates present or obviates the risk of future "imminent" harms, not a remedy that compensates for past cleanup efforts. Cf. § 6902(b) (national policy behind RCRA is "to minimize the present and future threat to human health and the environment").

Other aspects of RCRA's enforcement scheme strongly support this conclusion. Unlike CERCLA, RCRA contains no statute of limitations, compare § 9613(g)(2) (limitations period in suits under CERCLA § 9607), and it does not require a showing that the response costs being sought are reasonable, compare §§ 9607(a)(4)(A) and (B) (costs recovered under CERCLA must be "consistent with the national contingency plan"). If Congress had intended § 6972(a) to function as a cost-recovery mechanism, the absence of these provisions would be striking. Moreover, with one limited exception, see *Hallstrom* v. *Tillamook County*, 493 U. S. 20, 26–27 (1989) (noting exception to notice requirement "when there is a danger that hazardous waste will be discharged"), a private party may not bring suit under § 6972(a)(1)(B) without first giving 90 days' notice to the Administrator of the EPA, to "the State in which the alleged endangerment may occur," and to potential defendants, see §§ 6972(b)(2)(A)(i)–(iii). And no citizen suit can proceed if either the EPA or the State has commenced, and is diligently prosecuting, a separate enforcement action, see §§ 6972(b)(2)(B) and (C). Therefore, if RCRA were designed to compensate private parties for their past cleanup efforts, it would be a wholly irrational mechanism for doing so. Those parties with insubstantial problems, problems that neither the State nor

the Federal Government feel compelled to address, could recover their response costs, whereas those parties whose waste problems were sufficiently severe as to attract the attention of Government officials would be left without a recovery.

Though it agrees that KFC's complaint is defective for failing properly to allege an "imminent and substantial endangerment," the Government (as *amicus*) nonetheless joins KFC in arguing that § 6972(a) does not in all circumstances preclude an award of past cleanup costs. See Brief for United States as *Amicus Curiae* 22–28. The Government posits a situation in which suit is properly brought while the waste at issue continues to pose an imminent endangerment, and suggests that the plaintiff in such a case could seek equitable restitution of money previously spent on cleanup efforts. Echoing a similar argument made by KFC, see Brief for Respondent 11–19, the Government does not rely on the remedies expressly provided in § 6972(a), but rather cites a line of cases holding that district courts retain inherent authority to award any equitable remedy that is not expressly taken away from them by Congress. See, *e. g.*, *Porter* v. *Warner Holding Co.*, 328 U. S. 395 (1946); *Wyandotte Transp. Co.* v. *United States*, 389 U. S. 191 (1967); *Hecht Co.* v. *Bowles*, 321 U. S. 321 (1944).

RCRA does not prevent a private party from recovering its cleanup costs under other federal or state laws, see § 6972(f) (preserving remedies under statutory and common law), but the limited remedies described in § 6972(a), along with the stark differences between the language of that section and the cost recovery provisions of CERCLA, amply demonstrate that Congress did not intend for a private citizen to be able to undertake a cleanup and then proceed to recover its costs under RCRA. As we explained in *Middlesex County Sewerage Authority* v. *National Sea Clammers Assn.*, 453 U. S. 1, 14 (1981), where Congress has provided "elaborate enforcement provisions" for remedying the viola-

tion of a federal statute, as Congress has done with RCRA and CERCLA, "it cannot be assumed that Congress intended to authorize by implication additional judicial remedies for private citizens suing under" the statute. "'[I]t is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it.'" *Id.*, at 14–15 (quoting *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U. S. 11, 19 (1979)).

Without considering whether a private party could seek to obtain an injunction requiring another party to pay cleanup costs which arise after a RCRA citizen suit has been properly commenced, cf. *United States* v. *Price*, 688 F. 2d 204, 211–213 (CA3 1982) (requiring funding of a diagnostic study is an appropriate form of relief in a suit brought by the Administrator under § 6973), or otherwise recover cleanup costs paid out after the invocation of RCRA's statutory process, we agree with the Meghrigs that a private party cannot recover the cost of a *past* cleanup effort under RCRA, and that KFC's complaint is defective for the reasons stated by the District Court. Section 6972(a) does not contemplate the award of past cleanup costs, and § 6972(a)(1)(B) permits a private party to bring suit only upon an allegation that the contaminated site presently poses an "imminent and substantial endangerment to health or the environment," and not upon an allegation that it posed such an endangerment at some time in the past. The judgment of the Ninth Circuit is reversed.

It is so ordered.

Syllabus

VARITY CORP. *v.* HOWE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 94–1471. Argued November 1, 1995—Decided March 19, 1996

After petitioner Varity Corporation decided to transfer money-losing divisions in its subsidiary Massey-Ferguson, Inc., to a separately incorporated subsidiary, Massey Combines, it held a meeting to persuade employees of the failing divisions to change employers and benefit plans. Varity, the Massey-Ferguson plan administrator as well as the employer, conveyed the basic message that employees' benefits would remain secure when they transferred. In fact, Massey Combines was insolvent from the day it was created, and, when it ended its second year in a receivership, the employees who had transferred lost their nonpension benefits. Those employees, including respondents, filed this action under the Employee Retirement Income Security Act of 1974 (ERISA), claiming that Varity, through trickery, had led them to withdraw from their old plan and forfeit their benefits, and seeking the benefits they would have been owed had they not changed employers. The District Court found, among other things, that Varity and Massey-Ferguson, acting as ERISA fiduciaries, had harmed plan beneficiaries through deliberate deception, that they thereby violated ERISA § 404(a)'s fiduciary obligation to administer Massey-Ferguson's plan "solely in the interest of the [plan's] participants and beneficiaries," that ERISA § 502(a)(3) gave respondents a right to "appropriate equitable relief . . . to redress" the harm that this deception had caused them individually, and that such relief included reinstatement to the old plan. The Court of Appeals affirmed, in relevant part.

Held:

1. Varity was acting as an ERISA "fiduciary" when it significantly and deliberately misled respondents. The District Court's factual findings, unchallenged by Varity, adequately support that court's legal conclusion that, when Varity made its misrepresentations, it was exercising "discretionary authority" respecting the plan's "management" or "administration," within the meaning of ERISA § 3(21)(A). The court found that the key meeting was largely about benefits, for the documents presented there described the benefits in detail, explained the similarity between past and future plans in principle, and assured the employees that they would continue to receive similar benefits in prac-

tice. To offer beneficiaries such detailed plan information in order to help them decide whether to remain with the plan is essentially an exercise of a power "appropriate" to carrying out an important plan purpose. Moreover, the materials used at the meeting came from those at the firm with authority to communicate as fiduciaries with beneficiaries. Finally, reasonable employees, in the circumstances found by the District Court, could have thought that Varity was communicating with them both as employer and as plan administrator. Pp. 498–505.

2. In misleading respondents, Varity violated the fiduciary obligations that ERISA § 404 imposes upon plan administrators. To participate knowingly and significantly in deceiving a plan's beneficiaries in order to save the employer money at the beneficiaries' expense is not to act "solely in the interest of the participants and beneficiaries." There is no basis in the statute for any special interpretation that might insulate Varity from the legal consequences of the kind of conduct that often creates liability even among strangers. Pp. 506–507.

3. ERISA § 502(a)(3) authorizes lawsuits for individualized equitable relief for breach of fiduciary obligations. This Court's decision in *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134, that § 502(a)(2)—which permits actions "for appropriate relief under [§]409"—does not provide individual relief does not mean that such relief is not "appropriate" under subsection (3). The language that the Court found limiting in *Russell* appears in § 409, which authorizes relief only for the plan itself, and § 409 is not cross-referenced by subsection (3). Further, another remedial provision (subsection (1)) provided a remedy for the *Russell* plaintiff's injury, whereas here respondents would have no remedy at all were they unable to proceed under subsection (3). Granting individual relief is also consistent with ERISA's language, structure, and purpose. Subsection (3)'s language is broad enough to cover individual relief for breach of a fiduciary obligation, and other statutory language supports this conclusion. Nothing in ERISA's structure indicates that Congress intended § 409 to contain the exclusive set of remedies for every kind of fiduciary breach. In fact, § 502's structure suggests that Congress intended the general "catchall" provisions of subsections (3) and (5) to act as a safety net, offering appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy. Contrary to Varity's argument, there is nothing in the legislative history that conflicts with this interpretation. ERISA's general purpose of protecting beneficiaries' interests also favors a reading that provides respondents with a remedy. *Amici's* concerns that permitting individual relief will upset another congressional purpose—

the need for a sensible administrative system—seem unlikely to materialize. Pp. 507–515.

36 F. 3d 746 and 41 F. 3d 1263, affirmed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, and GINSBURG, JJ., joined. THOMAS, J., filed a dissenting opinion, in which O'CONNOR and SCALIA, JJ., joined, *post*, p. 516.

Floyd Abrams argued the cause for petitioner. With him on the briefs were *Thomas J. Kavaler, Katherine B. Harrison, Jonathan Sherman,* and *William J. Koehn.*

H. Richard Smith argued the cause for respondents. With him on the brief were *David Swinton, Michael J. Eason,* and *Robert J. Schmit.*

Deputy Solicitor General Kneedler argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Days, Richard P. Bress, Thomas S. Williamson, Jr., Allen H. Feldman, Steven J. Mandel, Mark S. Flynn,* and *Judith D. Heimlich.**

JUSTICE BREYER delivered the opinion of the Court.

A group of beneficiaries of a firm's employee welfare benefit plan, protected by the Employee Retirement Income Se-

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States by *Evan Miller, John G. Roberts, Jr.,* and *Stephen A. Bokat;* and for the Eastman Kodak Co. et al. by *Robert N. Eccles.*

Briefs of *amici curiae* urging affirmance were filed for the American Association of Retired Persons by *Steven S. Saleznick* and *Mary Ellen Signorille;* and for the National Employment Lawyers Association by *Stephen R. Bruce, Jeffrey Lewis, Ronald Dean,* and *Edgar Pauk.*

Briefs of *amici curiae* were filed for the Central States, Southeast and Southwest Areas Health and Welfare and Pension Fund by *Thomas C. Nyhan* and *Terence G. Craig;* and for the National Association of Securities and Commercial Law Attorneys by *Kevin P. Roddy, Jonathan W. Cuneo, Bryan L. Clobes, Stephen P. Hoffman, Henry H. Rossbacher,* and *Steve W. Berman.*

curity Act of 1974 (ERISA), 88 Stat. 832, as amended, 29 U. S. C. § 1001 *et seq.* (1988 ed.), have sued their plan's administrator, who was also their employer. They claim that the administrator, through trickery, led them to withdraw from the plan and to forfeit their benefits. They seek, among other things, an order that, in essence, would reinstate each of them as a participant in the employer's ERISA plan. The lower courts entered judgment in the employees' favor, and we agreed to review that judgment.

In conducting our review, we do not question the lower courts' findings of serious deception by the employer, but instead consider three legal questions. First, in the factual circumstances (as determined by the lower courts), was the employer acting in its capacity as an ERISA "fiduciary" when it significantly and deliberately misled the beneficiaries? Second, in misleading the beneficiaries, did the employer violate the fiduciary obligations that ERISA § 404 imposes upon plan administrators? Third, does ERISA § 502(a)(3) authorize ERISA plan beneficiaries to bring a lawsuit, such as this one, that seeks relief for individual beneficiaries harmed by an administrator's breach of fiduciary obligations?

We answer each of these questions in the beneficiaries' favor, and we therefore affirm the judgment of the Court of Appeals.

I

The key facts, as found by the District Court after trial, include the following: Charles Howe, and the other respondents, used to work for Massey-Ferguson, Inc., a farm equipment manufacturer, and a wholly owned subsidiary of the petitioner, Varity Corporation. (Since the lower courts found that Varity and Massey-Ferguson were "alter egos," we shall refer to them interchangeably.) These employees all were participants in, and beneficiaries of, Massey-Ferguson's self-funded employee welfare benefit plan—an ERISA-protected plan that Massey-Ferguson itself administered. In the mid-1980's, Varity became concerned that

some of Massey-Ferguson's divisions were losing too much money and developed a business plan to deal with the problem.

The business plan—which Varity called "Project Sunshine"—amounted to placing many of Varity's money-losing eggs in one financially rickety basket. It called for a transfer of Massey-Ferguson's money-losing divisions, along with various other debts, to a newly created, separately incorporated subsidiary called Massey Combines. The plan foresaw the possibility that Massey Combines would fail. But it viewed such a failure, from Varity's business perspective, as closer to a victory than to a defeat. That is because Massey Combine's failure would not only eliminate several of Varity's poorly performing divisions, but it would also eradicate various debts that Varity would transfer to Massey Combines, and which, in the absence of the reorganization, Varity's more profitable subsidiaries or divisions might have to pay.

Among the obligations that Varity hoped the reorganization would eliminate were those arising from the Massey-Ferguson benefit plan's promises to pay medical and other nonpension benefits to employees of Massey-Ferguson's money-losing divisions. Rather than terminate those benefits directly (as it had retained the right to do), Varity attempted to avoid the undesirable fallout that could have accompanied cancellation by inducing the failing divisions' employees to switch employers and thereby voluntarily release Massey-Ferguson from its obligation to provide them benefits (effectively substituting the new, self-funded Massey Combines benefit plan for the former Massey-Ferguson plan). Insofar as Massey-Ferguson's employees did so, a subsequent Massey Combines failure would eliminate—simply and automatically, without distressing the remaining Massey-Ferguson employees—what would otherwise have been Massey-Ferguson's obligation to pay those employees their benefits.

To persuade the employees of the failing divisions to accept the change of employer and benefit plan, Varity called

them together at a special meeting and talked to them about Massey Combines' future business outlook, its likely financial viability, and the security of their employee benefits. The thrust of Varity's remarks (which we shall discuss in greater detail *infra*, at 499–501) was that the employees' benefits would remain secure if they voluntarily transferred to Massey Combines. As Varity knew, however, the reality was very different. Indeed, the District Court found that Massey Combines was insolvent from the day of its creation and that it hid a $46 million negative net worth by overvaluing its assets and underestimating its liabilities.

After the presentation, about 1,500 Massey-Ferguson employees accepted Varity's assurances and voluntarily agreed to the transfer. (Varity also unilaterally assigned to Massey Combines the benefit obligations it owed to some 4,000 workers who had retired from Massey-Ferguson prior to this reorganization, without requesting permission or informing them of the assignment.) Unfortunately for these employees, Massey Combines ended its first year with a loss of $88 million, and ended its second year in a receivership, under which its employees lost their nonpension benefits. Many of those employees (along with several retirees whose benefit obligations Varity had assigned to Massey Combines and others whose claims we do not now consider) brought this lawsuit, seeking the benefits they would have been owed under their old, Massey-Ferguson plan, had they not transferred to Massey Combines.

After trial, the District Court found, among other things, that Varity and Massey-Ferguson, acting as ERISA fiduciaries, had harmed the plan's beneficiaries through deliberate deception. The court held that Varity and Massey-Ferguson thereby violated an ERISA-imposed fiduciary obligation to administer Massey-Ferguson's benefit plan "solely in the interest of the participants and beneficiaries" of the plan. ERISA § 404(a). The court added that ERISA § 502(a)(3) gave the former Massey-Ferguson employees a

right to "appropriate equitable relief . . . to redress" the harm that this deception had caused them individually. Among other remedies the court considered "appropriate equitable relief" was an order that Massey-Ferguson reinstate its former employees into its own plan (which had continued to provide benefits to employees of Massey-Ferguson's profitable divisions). The court also ordered certain monetary relief which is not at issue here. The Court of Appeals later affirmed the District Court's determinations, in relevant part. 36 F. 3d 746 (CA8 1994).

We granted certiorari in this case primarily because the Courts of Appeals have disagreed about the proper interpretation of ERISA § 502(a)(3), the provision the District Court held authorized the lawsuit and relief in this case. Some Courts of Appeals have held that this section, when applied to a claim of breach of fiduciary obligation, does not authorize awards of relief to individuals, but instead only authorizes suits to obtain relief for the *plan* (as, for example, when a beneficiary sues in a representative capacity, seeking to compel a dishonest fiduciary to return embezzled funds to the plan). See *McLeod* v. *Oregon Lithoprint Inc.*, 46 F. 3d 956 (CA9 1995); *Simmons* v. *Southern Bell Telephone and Telegraph Co.*, 940 F. 2d 614 (CA11 1991). Other Courts of Appeals, such as the Eighth Circuit in this case, have not read any such limitation into the statute. See *Bixler* v. *Central Pennsylvania Teamsters Health & Welfare Fund*, 12 F. 3d 1292 (CA3 1993); *Anweiler* v. *American Electric Power Service Corp.*, 3 F. 3d 986 (CA7 1993).

Varity has raised two additional issues. First, Varity points out that the relevant ERISA section imposes liability only upon plan *fiduciaries;* and it argues that it was acting only as an *employer* and not as a plan *fiduciary* when it deceived its employees. Second, it argues that, in any event, its conduct did not violate the fiduciary standard that ERISA imposes.

We consider all three issues to be fairly within the scope of the questions that Varity posed in its petition for certiorari, although only with respect to the workers who were deceived by Varity, for as we construe Varity's petition, it does not sufficiently call into question the District Court's holding that Varity breached a fiduciary duty with respect to the Massey-Ferguson retirees whose benefit obligations had been involuntarily assigned to Massey Combines. With these limitations in mind, we turn to the questions presented.

II

ERISA protects employee pensions and other benefits by providing insurance (for vested pension rights, see ERISA § 4001 *et seq.*), specifying certain plan characteristics in detail (such as when and how pensions vest, see §§ 201–211), and by setting forth certain general fiduciary duties applicable to the management of both pension and nonpension benefit plans. See § 404. In this case, we interpret and apply these general fiduciary duties and several related statutory provisions.

In doing so, we recognize that these fiduciary duties draw much of their content from the common law of trusts, the law that governed most benefit plans before ERISA's enactment. See *Central States, Southeast & Southwest Areas Pension Fund* v. *Central Transport, Inc.*, 472 U. S. 559, 570 (1985) ("[R]ather than explicitly enumerating *all* of the powers and duties of trustees and other fiduciaries, Congress invoked the common law of trusts to define the general scope of their authority and responsibility"); H. R. Rep. No. 93–533, pp. 3–5, 11–13 (1973), 2 Legislative History of the Employee Retirement Income Security Act of 1974 (Committee Print compiled for the Senate Subcommittee on Labor of the Committee on Labor and Public Welfare by the Library of Congress), Ser. No. 93–406, pp. 2350–2352, 2358–2360 (1976) (hereinafter Leg. Hist.); G. Bogert & G. Bogert, Law of Trusts and Trustees § 255, p. 343 (rev. 2d ed. 1992).

We also recognize, however, that trust law does not tell the entire story. After all, ERISA's standards and procedural protections partly reflect a congressional determination that the common law of trusts did not offer completely satisfactory protection. See ERISA §2(a). See also H. R. Rep. No. 93–533, *supra*, at 3–5, 11–13, 2 Leg. Hist. 2350–2352; 2358–2360; H. R. Conf. Rep. No. 93–1280, pp. 295, 302 (1974), 3 Leg. Hist. 4562, 4569. And, even with respect to the trust-like fiduciary standards ERISA imposes, Congress "expect[ed] that the courts will interpret this prudent man rule (and the other fiduciary standards) bearing in mind the special nature and purpose of employee benefit plans," *id.*, at 302, 3 Leg. Hist. 4569, as they "develop a 'federal common law of rights and obligations under ERISA-regulated plans.'" *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U. S. 101, 110–111 (1989) (quoting *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U. S. 41, 56 (1987)).

Consequently, we believe that the law of trusts often will inform, but will not necessarily determine the outcome of, an effort to interpret ERISA's fiduciary duties. In some instances, trust law will offer only a starting point, after which courts must go on to ask whether, or to what extent, the language of the statute, its structure, or its purposes require departing from common-law trust requirements. And, in doing so, courts may have to take account of competing congressional purposes, such as Congress' desire to offer employees enhanced protection for their benefits, on the one hand, and, on the other, its desire not to create a system that is so complex that administrative costs, or litigation expenses, unduly discourage employers from offering welfare benefit plans in the first place. Compare ERISA §2 with *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U. S. 73, 78–81 (1995), and *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 262–263 (1993).

We have followed this approach when interpreting, and applying, the statutory provisions here before us.

A

We begin with the question of Varity's fiduciary status. In relevant part, the statute says that a "person is a fiduciary with respect to a plan," and therefore subject to ERISA fiduciary duties, "to the extent" that he or she "exercises any discretionary authority or discretionary control respecting management" of the plan, or "has any discretionary authority or discretionary responsibility in the administration" of the plan. ERISA § 3(21)(A).

Varity was *both* an employer *and* the benefit plan's administrator, as ERISA permits. Compare ERISA § 3(16) (employer is, in some circumstances, the default plan administrator) with *NLRB* v. *Amax Coal Co.*, 453 U. S. 322, 329–330 (1981) (common law of trusts prohibits fiduciaries from holding positions that create conflict of interest with trust beneficiaries); Bogert & Bogert, *supra*, § 543, at 218, 264 (same). But, obviously, not all of Varity's business activities involved plan management or administration. Varity argues that when it communicated with its Massey-Ferguson workers about transferring to Massey Combines, it was not administering or managing the plan; rather, it was acting only in its capacity as an *employer* and not as a plan *administrator*.

The District Court, however, held that when the misrepresentations regarding employee benefits were made, Varity was wearing its "fiduciary," as well as its "employer," hat. In reviewing this legal conclusion, we give deference to the factual findings of the District Court, recognizing its comparative advantage in understanding the specific context in which the events of this case occurred. We believe that these factual findings (which Varity does not challenge) adequately support the District Court's holding that Varity was exercising "discretionary authority" respecting the plan's "management" or "administration" when it made these misrepresentations, which legal holding we have independently reviewed.

The relevant factual circumstances include the following: In the spring of 1986, Varity summoned the employees of Massey-Ferguson's money-losing divisions to a meeting at Massey-Ferguson's corporate headquarters for a 30-minute presentation. The employees saw a 90-second videotaped message from Mr. Ivan Porter, a Varity vice president and Massey Combines' newly appointed president. They also received four documents: (a) a several-page, detailed comparison between the employee benefits offered by Massey-Ferguson and those offered by Massey Combines; (b) a question-and-answer sheet; (c) a transcript of the Porter videotape; and (d) a cover letter with an acceptance form. Each of these documents discussed employee benefits and benefit plans, some briefly in general terms, and others at length and in detail:

(a) The longest document, the side-by-side benefits comparison, contained a fairly detailed description of the benefit plans. Its object was to show that after transfer, the employees' benefits would remain the same. It says, for example, that, under Massey-Ferguson's plan, "[d]iagnostic x-ray and laboratory expenses will be paid on the basis of reasonable and customary charges for such services." App. 70. It then repeats the same sentence in describing Massey Combines' "[d]iagnostic x-ray and laboratory expenses" benefits. *Ibid.* It describes about 20 different benefits in this way.

(b) The eight questions and answers on the question-and-answer sheet include three that relate to welfare benefits or to the ERISA pension plan Varity also administered:

> "Q. 3. What happens to my benefits, pension, etc.?
>
> "A. 3. When you transfer to MCC [Massey Combines], pay levels and benefit programmes will remain unchanged. There will be no loss of seniority or pensionable service.
>
> "Q. 4. Do you expect the terms and conditions of employment to change?

"A. 4. Employment conditions in the future will depend on our ability to make Massey Combines Corporation a success and if changes are considered necessary or appropriate, they will be made.

. . . . . .

"Q. 8. Are the pensions protected under MCC?

"A. 8. Responsibility for pension benefits earned by employees transferring to Massey Combines Corporation is being assumed by the Massey Combines Corporation Pension Plan.

"The assets which are held in the Massey Ferguson Pension Plan to fund such benefits as determined by actuarial calculations, are being transferred to the Massey Combines Corporation Plan. Such benefits and assets will be protected by the same legislation that protect the Massey Ferguson Pension Plan.

"There will be no change in pension benefits as a result of your transfer to Massey Combines Corporation." *Id.*, at 75–77.

(c) The transcript of the 90-second videotape message repeated much of the information in the question-and-answer sheet, adding assurances about Massey Combines' viability:

"This financial restructuring created Massey Combines Corporation and will provide the funds necessary to ensure its future viability. I believe that with the continued help and support of you we can make Massey Combines Corporation the kind of successful business enterprise which we all want to work for.

". . . . When you transfer your employment to the Massey Combines Corporation, pay levels and benefit programs will remain unchanged. There will be no loss of seniority or pensionable service. Employment conditions in the future will depend on the success of the Massey Combines Corporation and should changes be deemed appropriate or necessary, they will be made. . . .

"Finally, despite the depression which persists in the North American economy, I am excited about the future of Massey Combines Corporation." *Id.*, at 80.

(d) The cover letter, in five short paragraphs, repeated verbatim these benefit-related assurances:

"To enable us to accept you as an employee of Massey Combines Corporation and to continue to process the payment of benefits to you, we require that you complete the information below and return this letter . . . .

"When you accept employment with Massey Combines Corporation, pay levels and benefit programs will remain unchanged. There will be no loss of seniority or pensionable service. Employment conditions in the future will depend on our ability to make Massey Combines Corporation a success, and if changes are considered necessary or appropriate, they will be made.

"We are all very optimistic that our new company, has a bright future, and are excited by the new challenges facing all of us. . . .

"In order to ensure uninterrupted continuation of your pay and benefits, please return this signed acceptance of employment . . . ." *Id.*, at 82–83.

Given this record material, the District Court determined, as a factual matter, that the key meeting, to a considerable extent, was about benefits, for the documents described them in detail, explained the similarity between past and future plans in principle, and assured the employees that they would continue to receive similar benefits in practice. The District Court concluded that the basic message conveyed to the employees was that transferring from Massey-Ferguson to Massey Combines would not significantly undermine the security of their benefits. And, given this view of the facts, we believe that the District Court reached the correct legal conclusion, namely, that Varity spoke, in significant part, in its capacity as plan administrator.

To decide whether Varity's actions fall within the statutory definition of "fiduciary" acts, we must interpret the statutory terms which limit the scope of fiduciary activity to discretionary acts of plan "management" and "administration." ERISA § 3(21)(A). These words are not self-defining, and the activity at issue here neither falls clearly within nor outside of the common understanding of these words. The dissent looks to the dictionary for interpretive assistance. See *post*, at 528–529. Though dictionaries sometimes help in such matters, we believe it more important here to look to the common law, which, over the years, has given to terms such as "fiduciary" and trust "administration" a legal meaning to which, we normally presume, Congress meant to refer. See, *e. g.*, *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U. S. 318, 322 (1992). The ordinary trust law understanding of fiduciary "administration" of a trust is that to act as an administrator is to perform the duties imposed, or exercise the powers conferred, by the trust documents. See Restatement (Second) of Trusts § 164 (1957); 76 Am. Jur. 2d, Trusts § 321 (1992). Cf. ERISA § 404(a). The law of trusts also understands a trust document to implicitly confer "such powers as are necessary or appropriate for the carrying out of the purposes" of the trust. 3 A. Scott & W. Fratcher, Law of Trusts § 186, p. 6 (4th ed. 1988). See also Bogert & Bogert, Law of Trusts and Trustees § 551, at 41; *Central States*, 472 U. S., at 570. Conveying information about the likely future of plan benefits, thereby permitting beneficiaries to make an informed choice about continued participation, would seem to be an exercise of a power "appropriate" to carrying out an important plan purpose. After all, ERISA itself specifically requires administrators to give beneficiaries certain information about the plan. See, *e. g.*, ERISA §§ 102, 104(b)(1), 105(a). And administrators, as part of their administrative responsibilities, frequently offer beneficiaries more than the minimum information that the statute requires—for example, answering beneficiaries' questions about the meaning of

the terms of a plan so that those beneficiaries can more easily obtain the plan's benefits. To offer beneficiaries detailed plan information in order to help them decide whether to remain with the plan is essentially the same kind of plan-related activity. Cf. Restatement (Second) of Agency § 229(1) (1957) (determining whether an activity is within the "scope of . . . employment" in part by examining whether it is "of the same general nature as that authorized").

Moreover, as far as the record reveals, Mr. Porter's letter, videotape, and the other documents came from those within the firm who had authority to communicate as fiduciaries with plan beneficiaries. Varity does not claim that it authorized only special individuals, not connected with the meeting documents, to speak as plan administrators. See § 402(b)(2) (a plan may describe a "procedure under the plan for the allocation of responsibilities for the operation and administration of the plan").

Finally, reasonable employees, in the circumstances found by the District Court, could have thought that Varity was communicating with them *both* in its capacity as employer *and* in its capacity as plan administrator. Reasonable employees might not have distinguished consciously between the two roles. But they would have known that the employer was their plan's administrator and had expert knowledge about how their plan worked. The central conclusion ("your benefits are secure") could well have drawn strength from their awareness of that expertise, and one could reasonably believe that the employer, aware of the importance of the matter, so intended.

We conclude, therefore, that the factual context in which the statements were made, combined with the plan-related nature of the activity, engaged in by those who had plan-related authority to do so, together provide sufficient support for the District Court's legal conclusion that Varity was acting as a fiduciary.

Varity raises three contrary arguments. First, Varity argues that it was not engaged in plan administration because neither the specific disclosure provisions of ERISA, nor the specific terms of the plan instruments, App. 5–26, *required* it to make these statements. But that does not mean Varity was not engaging in plan administration in making them, as the dissent seems to suggest. See *post*, at 531–532, and n. 12. There is more to plan (or trust) administration than simply complying with the specific duties imposed by the plan documents or statutory regime; it also includes the activities that are "ordinary and natural means" of achieving the "objective" of the plan. Bogert & Bogert, *supra*, § 551, at 41–52. Indeed, the primary function of the fiduciary duty is to constrain the exercise of *discretionary* powers which are controlled by no other specific duty imposed by the trust instrument or the legal regime. If the fiduciary duty applied to nothing more than activities already controlled by other specific legal duties, it would serve no purpose.

Second, Varity says that when it made the statements that most worried the District Court—the statements about Massey Combines' "bright future"—it must have been speaking only as employer (and not as fiduciary), for statements about a new subsidiary's financial future have virtually nothing to do with administering benefit plans. But this argument parses the meeting's communications too finely. The ultimate message Varity intended to convey—"your benefits are secure"—depended in part upon its repeated assurances that benefits would remain "unchanged," in part upon the detailed comparison of benefits, and in part upon assurances about Massey Combines' "bright" financial future. Varity's workers would not necessarily have focused upon each underlying supporting statement separately, because what primarily interested them, and what primarily interested the District Court, was the truthfulness of the ultimate conclusion that transferring to Massey Combines would not ad-

versely affect the security of their benefits. And, in the present context (see *supra*, at 499–501), Varity's statements about the security of benefits amounted to an act of plan administration. That Varity intentionally communicated its conclusion through a closely linked set of statements (some directly concerning plan benefits, others concerning the viability of the corporation) does not change this conclusion.

We do not hold, as the dissent suggests, *post*, at 529–531, that Varity acted as a fiduciary simply because it made statements about its expected financial condition or because "an ordinary business decision turn[ed] out to have an adverse impact on the plan." *Post*, at 539. Instead, we accept the undisputed facts found, and factual inferences drawn, by the District Court, namely, that Varity *intentionally* connected its statements about Massey Combines' financial health to statements it made about the future of benefits, so that its intended communication about the security of benefits was rendered materially misleading. See App. to Pet. for Cert. 64a–65a, ¶¶ 65, 68. And we hold that making intentional representations about the future of plan benefits in that context is an act of plan administration.

Third, Varity says that an employer's decision to amend or terminate a plan (as Varity had the right to do) is not an act of plan administration. See *Curtiss-Wright Corp.*, 514 U. S., at 78–81. How then, it asks, could conveying information about the likelihood of termination be an act of plan administration? While it may be true that amending or terminating a plan (or a common-law trust) is beyond the power of a plan administrator (or trustee)— and, therefore, cannot be an act of plan "management" or "administration"—it does not follow that making statements about the likely future of the plan is also beyond the scope of plan administration. As we explained above, plan administrators often have, and commonly exercise, discretionary authority to communicate with beneficiaries about the future of plan benefits.

B

The second question—whether Varity's deception violated ERISA-imposed fiduciary obligations—calls for a brief, affirmative answer. ERISA requires a "fiduciary" to "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries." ERISA § 404(a). To participate knowingly and significantly in deceiving a plan's beneficiaries in order to save the employer money at the beneficiaries' expense is not to act "solely in the interest of the participants and beneficiaries." As other courts have held, "[l]ying is inconsistent with the duty of loyalty owed by all fiduciaries and codified in section 404(a)(1) of ERISA," *Peoria Union Stock Yards Co.* v. *Penn Mut. Life Ins. Co.*, 698 F. 2d 320, 326 (CA7 1983). See also *Central States*, 472 U. S., at 570–571 (ERISA fiduciary duty includes common-law duty of loyalty); Bogert & Bogert, Law of Trusts and Trustees § 543, at 218–219 (duty of loyalty requires trustee to deal fairly and honestly with beneficiaries); 2A Scott & Fratcher, Law of Trusts § 170, pp. 311–312 (same); Restatement (Second) of Trusts § 170 (same). Because the breach of this duty is sufficient to uphold the decision below, we need not reach the question whether ERISA fiduciaries have any fiduciary duty to disclose truthful information on their own initiative, or in response to employee inquiries.

We recognize, as mentioned above, that we are to apply common-law trust standards "bearing in mind the special nature and purpose of employee benefit plans." H. R. Conf. Rep. No. 93–1280, at 302, 3 Leg. Hist. 4569. But we can find no adequate basis here, in the statute or otherwise, for any special interpretation that might insulate Varity, acting as a fiduciary, from the legal consequences of the kind of conduct (intentional misrepresentation) that often creates liability even among strangers.

We are aware, as Varity suggests, of one possible reason for a departure from ordinary trust law principles. In arguing about ERISA's remedies for breaches of fiduciary obli-

gation, Varity says that Congress intended ERISA's fiduciary standards to protect only the financial integrity of the plan, not individual beneficiaries. This intent, says Varity, is shown by the fact that Congress did not provide remedies for individuals harmed by such breaches; rather, Congress limited relief to remedies that would benefit only the plan itself. This argument fails, however, because, in our view, Congress *did* provide remedies for individual beneficiaries harmed by breaches of fiduciary duty, as we shall next discuss.

C

The remaining question before us is whether or not the remedial provision of ERISA that the beneficiaries invoked, ERISA § 502(a)(3), authorizes this lawsuit for individual relief. That subsection is the third of six subsections contained within ERISA's "Civil Enforcement" provision (as it stood at the times relevant to this lawsuit):

> "Sec. 502. (a) A civil action may be brought—
>
> "(1) by a participant or beneficiary—
>
> "(A) for the relief provided for in subsection (c) of this section [providing for liquidated damages for failure to provide certain information on request], or
>
> "(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;
>
> "(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409 [entitled "Liability for Breach of Fiduciary Duty"];
>
> *"(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan;*

"(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c) [requiring disclosure of certain tax registration statements];

"(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title; or

"(6) by the Secretary to collect any civil penalty under subsection (i)." ERISA § 502(a), 88 Stat. 891, 29 U. S. C. § 1132(a) (1988 ed.) (emphasis added).

The District Court held that the third subsection, which we have italicized, authorized this suit and the relief awarded. Varity concedes that the plaintiffs satisfy most of this provision's requirements, namely, that the plaintiffs are plan "participants" or "beneficiaries," and that they are suing for "equitable" relief to "redress" a violation of § 404(a), which is a "provision of this title." Varity does not agree, however, that this lawsuit seeks equitable relief that is "*appropriate.*" In support of this conclusion, Varity makes a complicated, four-step argument:

Step One: Section 502(a)'s *second* subsection says that a plaintiff may bring a civil action "for appropriate relief under section 409."

Step Two: Section 409(a), in turn, reads:

"Liability for Breach of Fiduciary Duty

Sec. 409. (a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to *make good to such plan any losses to the plan* resulting from each such breach, and to *restore to such plan any profits* of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such *other equi-*

table or remedial relief as the court may deem appropriate, including removal of such fiduciary. . . ." (Emphasis added.)

Step Three: In *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134 (1985), this Court pointed to the above-italicized language in § 409 and concluded that this section (and its companion remedial provision, subsection (2)) did not authorize the plaintiff's suit for compensatory and punitive damages against an administrator who had wrongfully delayed payment of her benefit claim. The first two italicized phrases, the Court said, show that § 409's "draftsmen were primarily concerned with the possible misuse of plan assets, and with remedies that would protect the *entire plan*, rather than with the rights of an individual beneficiary." *Id.*, at 142 (emphasis added). The Court added that, in this context, the last italicized phrase ("other equitable or remedial relief") does not "authorize any relief except for the plan itself." *Id.*, at 144.

Step Four: In light of *Russell*, as well as ERISA's language, structure, and purposes, one cannot read the *third* subsection (the subsection before us) as *including* (as "appropriate") the very kind of action—an action for individual, rather than plan, relief—that this Court found Congress *excluded* in subsection (2). It is at this point, however, that we must disagree with Varity. We have reexamined *Russell*, as well as the relevant statutory language, structure, and purpose. And, in our view, they support the beneficiaries' view of the statute, not Varity's.

First, *Russell* discusses § 502(a)'s *second* subsection, not its *third* subsection, and the language that the Court found limiting appears in a statutory section (§ 409) that the *second* subsection, not the *third*, cross-references. *Russell*'s plaintiff expressly disavowed reliance on the third subsection, *id.*, at 139, n. 5, perhaps because she was seeking compensatory and punitive damages and subsection (3) authorizes only "equitable" relief. See *Mertens*, 508 U. S., at 255, 256–258, and

n. 8 (compensatory and punitive damages are not "equitable relief" within the meaning of subsection (3)); ERISA § 409(a) (authorizing "other equitable *or remedial* relief") (emphasis added). Further, *Russell* involved a complicating factor not present here, in that another remedial provision (subsection *(1)*) already provided specific relief for the sort of injury the plaintiff had suffered (wrongful denial of benefits), but said "nothing about the recovery of extracontractual damages, or about the possible consequences of delay in the plan administrators' processing of a disputed claim." *Russell, supra,* at 144. These differences lead us to conclude that *Russell* does not control, either implicitly or explicitly, the outcome of the case before us.

Second, subsection (3)'s language does not favor Varity. The words of subsection (3)—"appropriate equitable relief" to "redress" any "act or practice which violates any provision of this title"—are broad enough to cover individual relief for breach of a fiduciary obligation. Varity argues that the title of § 409—"Liability for Breach of Fiduciary Duty"—means that § 409 (and its companion, subsection (2)) cover *all* such liability. But that is not what the title or the provision says. And other language in the statute suggests the contrary. Section 502(l), added in 1989, calculates a certain civil penalty as a percentage of the sum "ordered by a court to be paid by such fiduciary . . . to a plan *or its participants and beneficiaries*" under subsection (5). Subsection (5) is identical to subsection (3), except that it authorizes suits by the Secretary, rather than the participants and beneficiaries. Compare § 502(a)(3) with § 502(a)(5). This new provision, therefore, seems to foresee instances in which the sort of relief provided by both subsection (5) and, by implication, subsection (3), would include an award to "participants and beneficiaries," rather than to the "plan," for breach of fiduciary obligation.

Third, the statute's structure offers Varity little support. Varity notes that the *second* subsection refers specifically

(through its § 409 cross-reference) to breaches of fiduciary duty, while the *third* subsection refers, as a kind of "catch-all," to all ERISA Title One violations. And it argues that a canon of statutory construction, namely "the specific governs over the general," means that the more specific *second* (fiduciary breach) subsection makes the more general *third* (catchall) subsection inapplicable to claims of fiduciary breach. Canons of construction, however, are simply "rules of thumb" which will sometimes "help courts determine the meaning of legislation." *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253 (1992). To apply a canon properly one must understand its rationale. This Court has understood the present canon ("the specific governs the general") as a warning against applying a general provision when doing so would undermine limitations created by a more specific provision. See, *e. g.*, *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 384–385 (1992); *HCSC-Laundry* v. *United States*, 450 U. S. 1, 6, 8 (1981); *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U. S. 222, 228–229 (1957). Yet, in this case, why should one believe that Congress intended the specific remedies in § 409 as a *limitation?*

To the contrary, one can read § 409 as reflecting a special congressional concern about plan asset management without also finding that Congress intended that section to contain the exclusive set of remedies for every kind of fiduciary breach. After all, ERISA makes clear that a fiduciary has obligations other than, and in addition to, managing plan assets. See § 3(21)(A) (defining "fiduciary" as one who "exercises any discretionary authority . . . respecting management of such plan *or* . . . respecting management or disposition of its assets") (emphasis added). For example, as the dissent concedes, *post*, at 530, a plan administrator engages in a fiduciary act when making a discretionary determination about whether a claimant is entitled to benefits under the terms of the plan documents. See § 404(a)(1)(D); Dept. of Labor, Interpretive Bulletin 75–8, 29 CFR § 2509.75–8 (1995)

("[A] plan employee who has the final authority to authorize or disallow benefit payments in cases where a dispute exists as to the interpretation of plan provisions . . . would be a fiduciary"); *Moore* v. *Reynolds Metals Co. Retirement Program*, 740 F. 2d 454, 457 (CA6 1984); *Birmingham* v. *Sogen-Swiss Intern. Corp. Retirement Plan*, 718 F. 2d 515, 521–522 (CA2 1983). And, as the Court pointed out in *Russell*, 473 U. S., at 144, ERISA specifically provides a remedy for breaches of fiduciary duty with respect to the interpretation of plan documents and the payment of claims, one that is outside the framework of the *second* subsection and cross-referenced § 409, and one that runs directly to the injured beneficiary. § 502(a)(1)(B). See also *Firestone*, 489 U. S., at 108. Why should we not conclude that Congress provided yet other remedies for yet other breaches of other sorts of fiduciary obligation in another, "catchall" remedial section?

Such a reading is consistent with § 502's overall structure. Four of that section's six subsections focus upon specific areas, *i. e.*, the first (wrongful denial of benefits and information), the second (fiduciary obligations related to the plan's financial integrity), the fourth (tax registration), and the sixth (civil penalties). The language of the other two subsections, the third and the fifth, creates two "catchalls," providing "appropriate equitable relief" for "any" statutory violation. This structure suggests that these "catchall" provisions act as a safety net, offering appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy. And, contrary to Varity's argument, there is nothing in the legislative history that conflicts with this interpretation. See S. Rep. No. 93–127, p. 35 (1973), 1 Leg. Hist. 621 (describing Senate version of enforcement provisions as intended to "provide both the Secretary and participants and beneficiaries with broad remedies for redressing or preventing violations of [ERISA]"); H. R. Rep. No. 93–533, at 17, 2 Leg. Hist. 2364 (describing House version in identical terms).

Fourth, ERISA's basic purposes favor a reading of the *third* subsection that provides the plaintiffs with a remedy. The statute itself says that it seeks

> "to protect . . . the interests of participants . . . and . . . beneficiaries . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries . . . and . . . providing for appropriate remedies . . . and ready access to the Federal courts." ERISA § 2(b).

Section 404(a), in furtherance of this general objective, requires fiduciaries to discharge their duties "solely in the interest of the participants and beneficiaries." Given these objectives, it is hard to imagine why Congress would want to immunize breaches of fiduciary obligation that harm individuals by denying injured beneficiaries a remedy.

Amici supporting Varity find a strong contrary argument in an important, subsidiary congressional purpose—the need for a sensible administrative system. They say that holding that the Act permits individuals to enforce fiduciary obligations owed directly to them as individuals threatens to increase the cost of welfare benefit plans and thereby discourage employers from offering them. Consider a plan administrator's decision not to pay for surgery on the ground that it falls outside the plan's coverage. At present, courts review such decisions with a degree of deference to the administrator, provided that "the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan." *Firestone*, *supra*, at 115. But what will happen, ask *amici*, if a beneficiary can repackage his or her "denial of benefits" claim as a claim for "breach of fiduciary duty?" Wouldn't a court, they ask, then have to forgo deference and hold the administrator to the "rigid level of conduct" expected of fiduciaries? And, as a consequence, would there not then be two "incompatible legal standards for courts hearing benefit claim disputes" depending upon whether the beneficiary

claimed simply "denial of benefits," or a virtually identical "breach of fiduciary duty?" See Brief for Chamber of Commerce as *Amicus Curiae* 10. Consider, too, they add, a medical review board trying to decide whether certain proposed surgery is medically necessary. Will the board's awareness of a "duty of loyalty" to the surgery-seeking beneficiary not risk inadequate attention to the countervailing, but important, need to constrain costs in order to preserve the plan's funds? *Id.*, at 11.

Thus, *amici* warn that a legally enforceable duty of loyalty that extends beyond plan asset management to individual beneficiaries will risk these and other adverse consequences. Administrators will tend to interpret plan documents as requiring payments to individuals instead of trying to preserve plan assets; nonexpert courts will try to supervise too closely, and second guess, the often technical decisions of plan administrators; and, lawyers will complicate ordinary benefit claims by dressing them up in "fiduciary duty" clothing. The need to avoid these consequences, they conclude, requires us to accept Varity's position.

The concerns that *amici* raise seem to us unlikely to materialize, however, for several reasons. First, a fiduciary obligation, enforceable by beneficiaries seeking relief for themselves, does not necessarily favor payment over nonpayment. The common law of trusts recognizes the need to preserve assets to satisfy future, as well as present, claims and requires a trustee to take impartial account of the interests of all beneficiaries. See Restatement (Second) of Trusts § 183 (discussing duty of impartiality); *id.*, § 232 (same).

Second, characterizing a denial of benefits as a breach of fiduciary duty does not necessarily change the standard a court would apply when reviewing the administrator's decision to deny benefits. After all, *Firestone*, which authorized deferential court review when the plan itself gives the administrator discretionary authority, based its decision upon

the same common-law trust doctrines that govern standards of fiduciary conduct. See Restatement (Second) of Trusts § 187 ("Where discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the court, except to prevent an abuse by the trustee of his discretion") (as quoted in *Firestone*, 489 U. S., at 111).

Third, the statute authorizes "*appropriate*" equitable relief. We should expect that courts, in fashioning "appropriate" equitable relief, will keep in mind the "special nature and purpose of employee benefit plans," and will respect the "policy choices reflected in the inclusion of certain remedies and the exclusion of others." *Pilot Life Ins. Co.*, 481 U. S., at 54. See also *Russell*, 473 U. S., at 147; *Mertens*, 508 U. S., at 263–264. Thus, we should expect that where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief normally would not be "appropriate." Cf. *Russell*, *supra*, at 144.

But that is not the case here. The plaintiffs in this case could not proceed under the *first* subsection because they were no longer members of the Massey-Ferguson plan and, therefore, had no "benefits due [them] under the terms of [the] plan." § 502(a)(1)(B). They could not proceed under the *second* subsection because that provision, tied to § 409, does not provide a remedy for individual beneficiaries. *Russell*, *supra*, at 144. They must rely on the *third* subsection or they have no remedy at all. We are not aware of any ERISA-related purpose that denial of a remedy would serve. Rather, we believe that granting a remedy is consistent with the literal language of the statute, the Act's purposes, and pre-existing trust law.

For these reasons, the judgment of the Court of Appeals is

Affirmed.

JUSTICE THOMAS, with whom JUSTICE O'CONNOR and JUSTICE SCALIA join, dissenting.

In *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134 (1985), we held that actions for fiduciary breach under §§ 409 and 502(a)(2), 29 U. S. C. §§ 1109, 1132(a)(2) (1988 ed.), the provisions of the Employee Retirement Income Security Act of 1974 (ERISA or Act) specifically designed for civil enforcement of fiduciary duties, must "be brought in a representative capacity on behalf of the plan as a whole." 473 U. S., at 142, n. 9. The Court today holds that § 502(a)(3), 29 U. S. C. § 1132(a)(3), the catchall remedial provision that directly follows § 502(a)(2), provides the individual relief for fiduciary breach that we found to be unavailable under § 502(a)(2). This holding cannot be squared with the text or structure of ERISA, and to reach it requires the repudiation of much of our reasoning in *Russell*. The Court also finds that Varity was subject to fiduciary obligations under ERISA because it engaged in activity of a "plan-related nature" that plan participants reasonably perceived to be conducted in the employer's capacity as plan fiduciary. *Ante*, at 503. This holding, like the first, has no basis in statutory text. Because these holdings are fundamentally at odds with the statutory scheme enacted by Congress, I respectfully dissent.

I

A

"ERISA is, we have observed, a 'comprehensive and reticulated statute,' the product of a decade of congressional study of the Nation's private employee benefit system." *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 251 (1993) (quoting *Nachman Corp.* v. *Pension Benefit Guaranty Corporation*, 446 U. S. 359, 361 (1980)). The Act is "an enormously complex and detailed statute that resolved innumerable disputes between powerful competing interests—not all in

favor of potential plaintiffs." 508 U. S., at 262. Given the "evident care" with which ERISA was crafted, we have traditionally been "reluctant to tamper with [the] enforcement scheme" embodied in the statute. *Russell*, *supra*, at 147. Accordingly, we have repeatedly declined invitations by plan participants and beneficiaries to extend benefits and remedies not specifically authorized by the statutory text. See, *e. g.*, *Mertens*, *supra*, at 262 (rejecting claim that ERISA affords a cause of action against a nonfiduciary who knowingly participates in a fiduciary breach); *Russell*, *supra*, at 145–148 (declining invitation to create an implied private cause of action for extracontractual damages); *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U. S. 41, 56 (1987) (holding that civil enforcement scheme codified at § 502(a) is not to be supplemented by state-law remedies).

Nowhere is the care with which ERISA was crafted more evident than in the Act's mechanism for the enforcement of fiduciary duties. Part 4 of the Act's regulatory provisions, entitled "Fiduciary Responsibility," see §§ 401–414, 29 U. S. C. §§ 1101–1114, assigns fiduciaries "a number of detailed duties and responsibilities." *Mertens*, *supra*, at 251. Part 4 also includes its own liability provision, § 409, which we considered in *Russell*. Entitled "Liability for Breach of Fiduciary Duty," § 409 provides:

> "Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary." § 409(a), as codified in 29 U. S. C. § 1109(a) (1988 ed.).

Section 409, however, only creates liability. In order to enforce the right and obtain the remedy created by § 409, a plaintiff must bring suit under § 502(a)(2), one of ERISA's "carefully integrated civil enforcement provisions." *Russell, supra,* at 146. That section allows plan participants, beneficiaries, and fiduciaries, as well as the Secretary of Labor, to bring a "civil action . . . for appropriate relief" under § 409. Of the nine enforcement provisions currently codified at § 502(a), § 502(a)(2) is the only one that specifically authorizes suit for breach of fiduciary duty.

The plaintiffs in this case chose not to proceed through this carefully constructed framework, designed specifically to provide a cause of action for claims of fiduciary breach. Instead, the plaintiffs brought their claims for breach of fiduciary duty under § 502(a)(3) of the Act, which they claim provides an alternative basis for relief. Section 502(a)(3), as codified in 29 U. S. C. § 1132(a)(3) (1988 ed.), is a catchall remedial provision that authorizes a civil action

> "by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan."

Since respondents are seeking equitable relief to redress a claimed violation of § 404, which is a provision in the same subchapter as § 502(a)(3), and since § 502(a)(3) authorizes recovery for breach of *any* provision in that subchapter, respondents contend that their claim of breach of fiduciary duty is cognizable under the plain language of § 502(a)(3). Respondents have a plausible textual argument, if § 502(a)(3) is read without reference to its surrounding provisions or our precedents.

Respondents' decision to proceed under § 502(a)(3)'s catchall provision instead of under §§ 409 and 502(a)(2) was obvi-

ously motivated by our decision in *Russell*. We held in *Russell* that § 409 authorizes recovery only by "the plan as an entity," 473 U. S., at 140, and does not allow for recovery by individual plan participants. *Id.*, at 139–144; see also *id.*, at 144 ("Congress did not intend that section to authorize any relief except for the plan itself"). The respondents, however, do not seek relief on behalf of the plan; rather they wish to recover individually. We reserved the question whether relief might be available for individuals under § 502(a)(3) in *Russell*, *id.*, at 139, n. 5, and respondents rightly understood this provision to offer the only possible route for securing their desired relief.

We would have to read § 502(a)(3) in a vacuum, however, to find in respondents' favor. Congress went to great lengths to enumerate ERISA's fiduciary obligations and duties, see §§ 401–408; §§ 410–412, to create liability for breach of those obligations, see § 409, and to authorize a civil suit to enforce those provisions, see § 502(a)(2). Section 502(a)(3), in contrast, is a generally worded provision that fails even to mention fiduciary duty. "[I]t is a commonplace of statutory construction that the specific governs the general." *Morales* v. *Trans World Airlines, Inc.*, 504 U. S. 374, 384 (1992) (citing *Crawford Fitting Co.* v. *J. T. Gibbons, Inc.*, 482 U. S. 437, 445 (1987)). "[T]he law is settled that '[h]owever inclusive may be the general language of a statute, it "will not be held to apply to a matter specifically dealt with in another part of the same enactment."'" *Fourco Glass Co.* v. *Transmirra Products Corp.*, 353 U. S. 222, 228 (1957) (citations omitted). This is particularly true where, as here, Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions. See *HCSC-Laundry* v. *United States*, 450 U. S. 1, 6 (1981) *(per curiam)* (This "basic principle of statutory construction" applies "particularly when the two [provisions] are interrelated and closely positioned, both in fact being parts of" the same

statutory scheme). Applying this basic rule of statutory construction, I conclude that Congress intended §§ 409 and 502(a)(2) to provide the exclusive mechanism for bringing claims of breach of fiduciary duty.[1]

If Congress had intended to allow individual plan participants to secure equitable relief for fiduciary breaches, I presume it would have made that clear in §§ 409 and 502(a)(2), the provisions specifically enacted to address breach of fiduciary duty. See *Russell*, 473 U. S., at 144 (rejecting claim for extracontractual damages for failure timely to provide benefits in part because "the statutory provision explicitly authorizing a beneficiary to bring an action to enforce his rights under the plan—§ 502(a)(1)(B)—says nothing about the recovery of extracontractual damages") (citation omitted). In fact, Congress did provide for equitable relief in § 409, which authorizes "such other equitable or remedial relief as the court may deem appropriate" to redress a breach of fiduciary duty, but it only allowed such relief to be recovered by the plan. Congress did not extend equitable relief to individual plan participants, and we reversed the Court of Appeals in *Russell* for holding that it did. See *id.*, at 140. Thus, to accept the majority's position, I would have to conclude not only that Congress forgot to provide for individual relief in §§ 409 and 502(a)(2), but that it clearly intended to provide for individual relief in § 502(a)(3), a catchall provision that fails even to mention fiduciary breach and uses language identical to that in § 409, which we have already held authorizes equitable relief only on behalf of the plan. Compare

[1] On other occasions we have recognized that "[r]edundancies across statutes are not unusual events in drafting," and that where statutes overlap, courts should give effect to both absent a "'positive repugnancy'" between them. *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253 (1992) (quoting *Wood* v. *United States*, 16 Pet. 342, 363 (1842)). But *Germain* and similar cases involved claims of implied repeal, which we have long held should not be recognized unless two statutes irreconcilably conflict. *Germain* did not involve simultaneously enacted, consecutive provisions of the same Act, as in this case.

§ 409 (authorizing "such . . . equitable . . . relief as the court may deem appropriate") with § 502(a)(3) (authorizing "appropriate equitable relief"). While I would disagree with the majority's strained statutory interpretation in any case, "[t]he assumption of inadvertent omission is rendered especially suspect upon close consideration of ERISA's interlocking, interrelated, and interdependent remedial scheme, which is in turn part of a 'comprehensive and reticulated statute.'" *Russell, supra,* at 146 (quoting *Nachman Corp.* v. *Pension Benefit Guaranty Corporation,* 446 U. S., at 361). See also *Mackey* v. *Lanier Collection Agency & Service, Inc.,* 486 U. S. 825, 837 (1988).[2]

The majority's reading of § 502(a)(3) also renders a portion of § 409 superfluous. If, as the Court today holds, § 502(a)(3) authorizes relief for breaches of fiduciary duty, then that section must authorize relief *on behalf of the plan* as well as on behalf of individuals. Nothing in § 502(a)(3) limits relief

[2] The majority apparently believes that § 502(a)(1)(B), 29 U. S. C. § 1132(a)(1)(B), "provides a remedy for breaches of fiduciary duty with respect to the interpretation of plan documents and the payment of claims." *Ante,* at 512 (citing *Russell,* 473 U. S., at 144). Since, in the majority's view, § 502(a)(1)(B) allows for individual recovery for fiduciary breach outside the framework created by §§ 409 and 502(a)(2), the majority wonders "[w]hy should we not conclude that Congress provided yet other remedies for yet other breaches of other sorts of fiduciary obligation in another, 'catchall' remedial section?" *Ante,* at 512.

The answer is simple. Contrary to the majority's understanding, § 502(a)(1)(B) does *not* create a cause of action for fiduciary breach, and *Russell* expressly rejected the claim that it does. Thus, the entire premise of the question is flawed. Section 502(a)(1)(B) deals exclusively with contractual rights under the plan. It allows a participant or beneficiary to bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." As we recognized in *Russell,* this provision "says nothing about the recovery of extracontractual damages." 473 U. S., at 144. If the justification for the Court's holding is that we should allow individual recovery for fiduciary breach under § 502(a)(3) since such recovery is available under § 502(a)(1)(B), then there really is no justification at all.

solely to individuals. And § 404(a), which the Court holds to be enforceable through § 502(a)(3), provides protection primarily, if not exclusively, for the plan. See *Russell*, *supra*, at 142–143, and n. 10. But if § 502(a)(3) allows plan participants to secure equitable relief on behalf of the plan, then § 409's promise of appropriate equitable relief for the plan is entirely redundant. Thus, the Court violates yet another well-settled rule of statutory construction, namely, that "courts should disfavor interpretations of statutes that render language superfluous." *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253 (1992). Of course, this result could be avoided simply by reading the statute as written and by respecting the canon that specific enactments trump general ones in carefully constructed statutes like ERISA.

B

This is not simply a case about the "specific governing the general," however. Nor is this a case solely about the interrelationship between §§ 409 and 502(a)(3). At every turn lies statutory proof, most of which the majority ignores, that Congress never intended to authorize individual plan participants to secure relief for fiduciary breach under ERISA. The majority also gives short shrift to our decision in *Russell*. See *ante*, at 509–510. It is only by overlooking the language and structure of ERISA and our reasoning in *Russell* that the majority is able to reach the conclusion that it does.

I begin with the Court's failure to address our reasoning and analysis in *Russell*. We held in *Russell* that under § 409, "actions for breach of fiduciary duty [must] be brought in a representative capacity on behalf of the plan as a whole." 473 U. S., at 142, n. 9. Because the holding in *Russell* applied only to §§ 409 and 502(a)(2), and because we reserved the question of individual relief under § 502(a)(3), see *id.*, at 139, n. 5, the majority concludes that "*Russell* does not control, either implicitly or explicitly, the outcome of the case before us." *Ante*, at 510.

Russell cannot be so easily dismissed. Our holding in that case was based not only on the text of § 409, but also on "the statutory provisions defining the duties of a fiduciary, and [on] the provisions defining the rights of a beneficiary." 473 U. S., at 140. The language of § 409 weighed heavily in our analysis, but it was ultimately "[a] fair contextual reading of the statute," *id.*, at 142, that led to our conclusion that "Congress did not intend that section to authorize any relief except for the plan itself." *Id.*, at 144. The majority is simply wrong when it states that the language "the Court found limiting" in *Russell* appears only in § 409. *Ante*, at 509. Since our holding in *Russell* relied on the language and structure of ERISA as a whole, and not solely on the text of §§ 409 and 502(a)(2), the Court cannot dismiss *Russell* on the ground that *Russell* provides no insight into the provisions at issue in this case.

Much of our reasoning in *Russell* forecloses the possibility of individual relief even under § 502(a)(3). For instance, in interpreting § 409 in *Russell* to afford relief solely on behalf of the plan, we found it significant that "the relevant fiduciary relationship characterized at the outset [of § 409 is] one 'with respect to a plan.'" 473 U. S., at 140. It must also be significant, then, that Congress employed the same or similar language virtually every time it referred to a fiduciary or a fiduciary obligation in ERISA. See, *e. g.*, §§ 3(21)(A), 404, 405, 406, 409, 411, 29 U. S. C. §§ 1002(21)(A), 1104, 1105, 1106, 1109, 1111. Section 404, the very provision that respondents seek to enforce in this case, governs the manner in which "a fiduciary . . . discharge[s] his duties *with respect to a plan.*" § 404(a)(1) (emphasis added). And the definition of a fiduciary under ERISA also places the focus on the responsibilities of a "fiduciary *with respect to a plan.*" § 3(21)(A) (emphasis added). In light of the "basic canon of statutory construction that identical terms within an Act bear the same meaning," *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 479 (1992) (citation omitted), we should

accord Congress' repeated references to a "fiduciary with respect to a plan" the same significance we attributed to it in *Russell*, namely, that it reveals that ERISA's fiduciary obligations were designed to regulate the relationship between the fiduciary and the plan, and not the relationship between the fiduciary and individual participants.

Furthermore, "the emphasis on the relationship between the fiduciary and the plan as an entity" that we found to be "apparent" on the face of § 409, *Russell*, 473 U. S., at 140, pervades all of the fiduciary provisions in ERISA. This is to be expected, since the relief available under § 409 ultimately reflects the fiduciary duties and obligations that § 409 enforces. We recognized in *Russell* that, consistent with the wording of § 409, "the principal statutory duties imposed on the trustees relate to the proper management, administration, and investment of fund assets, the maintenance of proper records, the disclosure of specified information, and the avoidance of conflicts of interest." *Id.*, at 142–143. Though it is true that ERISA requires fiduciaries to discharge their "duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of providing benefits to participants and their beneficiaries," § 404(a)(1)(A)(i), it is equally true that the duties to which these commands apply deal primarily with obligations that relate to the plan, not individual plan participants. In fact, one of the two statutes we specifically cited in *Russell* as evidence that Congress was primarily concerned with the misuse of plan assets was § 404, the provision that respondents seek to enforce in this case. See 473 U. S., at 142–143, and n. 10.[3] That Congress was principally con-

[3] We also observed in *Russell* that the Act's legislative history, like its statutory provisions, "emphasize[s] the fiduciary's personal liability for losses *to the plan*." 473 U. S., at 140, n. 8 (emphasis in original). We gleaned from the legislative history that "the crucible of congressional concern was misuse and mismanagement of plan assets by plan administrators and that ERISA was designed to prevent these abuses in the future." *Id.*, at 141, n. 8.

cerned with "the financial integrity of the plan," *id.*, at 142, n. 9, is thus reflected not only in § 409, but throughout the fiduciary provisions § 409 enforces.[4]

Thus, though the majority finds *Russell* to be irrelevant, it is all but dispositive. We analyzed in that case all of the provisions the Court today holds to be enforceable through § 502(a)(3). We considered these provisions as part of our "contextual reading" of § 409, and only when we read § 409 in conjunction with these surrounding provisions did it become "abundantly clear that [§ 409's] draftsmen were primarily concerned with the possible misuse of plan assets, and with remedies that would protect the entire plan, rather than with the rights of an individual beneficiary." *Russell*, *supra*, at 142. This is not to say that Congress did not intend to protect plan participants from fiduciary breach; it surely did. Congress chose, however, to protect individuals by creating a single remedy on behalf of the plan rather than authorizing piecemeal suits for individual relief.

Given Congress' apparent intent to allow suit for breach of fiduciary duty exclusively under §§ 409 and 502(a)(2), and given the abundant evidence of Congress' intent to authorize only relief on behalf of the plan, I would hold that individual relief for fiduciary breach is unavailable under § 502(a)(3).

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[4] The majority's citation of § 502(l), 29 U. S. C. § 1132(*l*) (1988 ed., Supp. I), in support of its interpretation of § 502(a)(3) is unpersuasive. Section 502(l) was enacted by Congress in 1989, more than a decade after ERISA was initially enacted. We have recognized that in interpreting ERISA, as with all statutes, "'the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'" *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U. S. 101, 114 (1989) (quoting *United States* v. *Price*, 361 U. S. 304, 313 (1960)). See also *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 839–840 (1988). In any event, to the extent that § 502(l) indicates Congress' understanding (in 1989) that individual relief might be available for fiduciary breach, § 502(l) confirms that Congress did not believe that § 502(a)(3) affords such relief. That is the most reasonable inference from Congress' citation of §§ 502(a)(2) and (a)(5)—and, notably, not of § 502(a)(3)—in reference to statutes purportedly authorizing amounts to be paid to plan participants and beneficiaries.

II

Even assuming that ERISA authorizes recovery for breach of fiduciary duty by individual plan participants, I cannot agree with the majority that Varity committed any breach of fiduciary duty cognizable under ERISA. Section 3(21)(A) of the Act explicitly defines the extent to which a person will be considered a fiduciary under ERISA. See 29 U. S. C. § 1002(21)(A). In place of the statutory language, the majority creates its own standard for determining fiduciary status. But constrained, as I am, to follow the command of the statute, I conclude that Varity's conduct is not actionable as a fiduciary breach under the Act.[5]

A

Under ERISA, an employer is permitted to act both as plan sponsor and plan administrator. § 408(c)(3), 29 U. S. C. § 1108(c)(3) (1988 ed.). Employers who choose to administer their own plans assume responsibilities to both the company and the plan, and, accordingly, owe duties of loyalty and care to both entities. In permitting such arrangements, which ordinary trust law generally forbids due to the inherent potential for conflict of interest,[6] Congress understood that the

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[5] As explained *supra*, at 524, the principal duties that ERISA imposes on plan fiduciaries involve the management of plan assets, the maintenance of records, disclosure of specified information, and avoidance of conflicts of interest. See *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U. S. 134, 142–143 (1985). Accordingly, we have recognized that "[f]iduciary status under ERISA generally attends the management of 'plan assets.'" *John Hancock Mut. Life Ins. Co.* v. *Harris Trust and Sav. Bank*, 510 U. S. 86, 89 (1993). However, since the Court holds that individual plan participants are entitled to recover for breach of fiduciary duty, I proceed here on the assumption that fiduciary status can be predicated to some extent on interactions with individual plan participants.

[6] See *NLRB* v. *Amax Coal Co.*, 453 U. S. 322, 329–330 (1981) ("To deter the trustee from all temptation and to prevent any possible injury to the beneficiary, the rule against a trustee dividing his loyalties must be enforced with 'uncompromising rigidity.' A fiduciary cannot contend 'that,

interests of the plan might be sacrificed if an employer were forced to choose between the company and the plan. Hence, Congress imposed on plan administrators a duty of care that requires them to "discharge [their] duties with respect to a plan solely in the interest of the participants and beneficiaries." § 404(a)(1). Congress also understood, however, that virtually every business decision an employer makes can have an adverse impact on the plan, and that an employer would not be able to run a company profitably if every business decision had to be made in the best interests of plan participants.

In defining the term "fiduciary" in § 3(21)(A) of ERISA, Congress struck a balance that it believed would protect plan participants without impinging on the ability of employers to make business decisions. In recognition that ERISA allows trustee-beneficiary arrangements that the common law of trusts generally forbids, Congress "define[d] 'fiduciary' not in terms of formal trusteeship, but in *functional* terms of control and authority over the plan." *Mertens*, 508 U. S., at 262 (emphasis in original). Accordingly, under ERISA, a person "is a fiduciary with respect to a plan" only "to the extent" that "he has any discretionary authority or discretionary responsibility in the administration of such plan." § 3(21)(A)(iii), 29 U. S. C. § 1002(21)(A)(iii) (1988 ed.).[7] This

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although he had conflicting interests, he served his masters equally well or that his primary loyalty was not weakened by the pull of his secondary one'") (citations omitted). See also G. Bogert & G. Bogert, Law of Trusts and Trustees §§ 121, 543 (rev. 2d ed. 1993).

[7] A person is also a "fiduciary with respect to a plan" under ERISA "to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, [or] (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so." § 3(21)(A), 29 U. S. C. § 1002(21)(A). In this case, the parties agree that Varity's status as a fiduciary turns on an interpretation of the statute's third category, which

"artificial definition of 'fiduciary,'" *Mertens, supra,* at 255, n. 5, is designed, in part, so that an employer that administers its own plan is not a fiduciary to the plan for all purposes and at all times, but only to the extent that it has discretionary authority to administer the plan. When the employer is not acting as plan administrator, it is not a fiduciary under the Act, and the fiduciary duty of care codified in § 404 is not activated.

Though we have recognized that Congress borrowed from the common law of trusts in enacting ERISA, *Firestone Tire & Rubber Co.* v. *Bruch,* 489 U. S. 101, 111 (1989), we must not forget that ERISA is a statute, and in "'every case involving construction of a statute,'" the "'starting point . . . is the language itself.'" *Ernst & Ernst* v. *Hochfelder,* 425 U. S. 185, 197 (1976) (citation omitted); see *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.,* 511 U. S. 164, 173 (1994). We should be particularly careful to abide by the statutory text in this case, since, as explained, ERISA's statutory definition of a fiduciary departs from the common law in an important respect. The majority, however, tells us that the "starting point" in determining fiduciary status under ERISA is the common law of trusts. *Ante,* at 497. According to the majority, it is only "after" courts assess the common law that they may "go on" to consider the statutory definition, and even then the statutory inquiry is only "to ask whether, or to what extent, the language of the statute, its structure, or its purposes require departing from common-law trust requirements." *Ibid.* This is a novel approach to statutory construction, one that stands our traditional approach on its head.

To determine whether an employer acts as a fiduciary under ERISA, I begin with the text of § 3(21)(A)(iii). To "administer" a plan is to "manage or supervise the execution

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relates to plan administration. See Brief for Petitioner 31; Brief for Respondents 33. See also Brief for United States as *Amicus Curiae* 25.

. . . or conduct of" the plan. Webster's Ninth New Collegiate Dictionary 57 (1991). See also Webster's New International Dictionary 34 (2d ed. 1957) (same). Essentially, to administer the plan is to implement its provisions and to carry out plan duties imposed by the Act. The question in this case is whether Varity was carrying out discretionary responsibilities over management or implementation of the plan, when, as respondents argued below, it "made misrepresentations to the class plaintiffs about MCC's business prospects and about the anticipated effect of the employment transfers on plaintiffs' benefits." Brief for Plaintiffs-Appellees in No. 93–2056 (CA8), p. 27. Although representations of this sort may well affect plan participants' assessment of the security of their benefits, I disagree with the majority that such communications qualify as "plan administration" under the Act.

In the course of running a business, an employer that administers its own benefits plan will make countless business decisions that affect the plan. Congress made clear in § 3(21)(A), however, that "'ERISA does not require that "day-to-day corporate business transactions, which may have a collateral effect on prospective, contingent employee benefits, be performed solely in the interest of plan participants."'" *Adams* v. *Avondale Industries, Inc.*, 905 F. 2d 943, 947 (CA6) (citation omitted), cert. denied, 498 U. S. 984 (1990). Thus, ordinary business decisions, such as whether to pay a dividend or to incur debt, may be made without fear of liability for breach of fiduciary duty under ERISA, even though they may turn out to have negative consequences for plan participants. Even business decisions that directly affect the plan and plan participants, such as the decision to modify or terminate welfare benefits, are not governed by ERISA's fiduciary obligations because they do not involve discretionary administration of the plan. See *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U. S. 73, 78 (1995) (par-

enthetically quoting *Adams*, *supra*, at 947, for the proposition that "'a company does not act in a fiduciary capacity when deciding to amend or terminate a welfare benefits plan'"). In contrast, the discretionary interpretation of a plan term, or the discretionary determination that the plan does not authorize a certain type of procedure, would likely qualify as plan administration by a fiduciary. There is no claim in this case, however, that Varity failed to implement the plan according to its terms, since respondents actually received all of the benefits to which they were entitled under the plan, as the courts below found.

An employer will also make countless representations in the course of managing a business about the current and expected financial condition of the corporation.[8] Similarly, an employer may make representations that either directly or impliedly evince an intention to increase, decrease, or maintain employee welfare benefits. Like the decision to terminate or modify welfare benefits, the decision to make, or not to make, such representations is made in the employer's "corporate nonfiduciary capacity as plan sponsor or settlor," *Borst* v. *Chevron Corp.*, 36 F. 3d 1308, 1323, n. 28 (CA5 1994), cert. denied, 514 U. S. 1066 (1995), and ERISA's fiduciary rules do not apply. Such communications simply are not made in the course of implementing the plan or executing its terms. Rather, they are the necessary incidents of conducting a business, and Congress determined that employers

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[8] The statements Varity made in this case are typical of the kind of statements management often makes in assessing the expected financial health of the company. See App. 80 ("I believe that with the continued help and support of you we can make Massey Combines Corporation the kind of successful business enterprise which we all want to work for"); *ibid.* ("[D]espite the depression which persists in the North American economy, I am excited about the future of Massey Combines Corporation"); *id.*, at 82 ("We are all very optimistic that our new company, has a bright future, and are excited by the new challenges facing all of us").

would not be burdened with fiduciary obligations to the plan when engaging in such conduct. See § 3(21)(A)(iii).[9]

To be sure, ERISA does impose a "comprehensive set of 'reporting and disclosure' requirements," which is part of "an elaborate scheme . . . for enabling beneficiaries to learn their rights and obligations at any time." *Curtiss-Wright Corp.* v. *Schoonejongen*, *supra*, at 83; see §§ 101–111, 29 U. S. C. §§ 1021–1031.[10] But no provision of ERISA requires an employer to keep plan participants abreast of the plan sponsor's

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[9] Applying ERISA's fiduciary obligations to these types of communications will distort corporate decisionmaking in a way never intended by Congress. For instance, as petitioner observes, an employer contemplating the purchase of a competitor or the downsizing of a division "would be required, in order to avoid liability under ERISA, to fully describe [to its employees] its plans to do so because such plans might affect the 'security' of welfare benefits." Reply Brief for Petitioner 16, n. 20. Even if the Court's holding is not extended to cover the nondisclosure of information that might affect employee benefits, a simple inquiry by an employee into the possible effect of a business decision on plan benefits would be sufficient to saddle the employer with fiduciary obligations in conducting the proposed business transaction.

[10] For instance, the benefits plan must be established pursuant to a written instrument. § 402(a)(1), 29 U. S. C. § 1102(a)(1). Plan administrators must also furnish to participants a summary plan description, § 101(a), 29 U. S. C. § 1021(a), which "shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." § 102(a)(1), 29 U. S. C. § 1022(a)(1). The summary plan description must describe, among other things, the plan's requirements governing eligibility for participation and benefits as well as the procedures for presenting claims for benefits. § 102(b), 29 U. S. C. § 1022(b). Material modifications must be disclosed and must also be "written in a manner calculated to be understood by the average plan participant." § 102(a)(1). Plan administrators are also required to disclose specified financial information in annual reports filed with the Secretary of Labor and made available to participants upon request. §§ 103(b), 104(b), 29 U. S. C. §§ 1023(b), 1024(b). ERISA also dictates the times at which such disclosures must be made. § 104(b)(1).

financial security or of the sponsor's future intentions with regard to terminating or reducing the level of benefits.[11] And to the extent that ERISA does impose disclosure obligations, the Act already provides for civil liability and penalties for disclosure violations wholly apart from ERISA's provisions governing fiduciary duties. See §§ 502(a)(1)(A), 502(c). Though "[t]his may not be a foolproof informational scheme, . . . it is quite thorough." *Curtiss-Wright Corp., supra*, at 84. Congress' decision not to include the types of representations at issue in this case within the Act's extensive disclosure requirements is strong evidence that Congress did not consider such statements to qualify as "plan administration."[12]

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[11] To the contrary, "[e]mployers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans." *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U. S. 73, 78 (1995). As we made clear last Term, "ERISA does not create any substantive entitlement to employer-provided health benefits or any other kind of welfare benefits," nor does it "establish any minimum participation, vesting, or funding requirements for welfare plans as it does for pension plans." *Ibid.*

[12] Nor is the communication of information about the company's well-being or the possible effect of a business transaction on plan benefits considered plan administration under the Massey-Ferguson plan at issue in this case. The plan, the terms of which the majority fails to address, contains only two provisions that either require or authorize plan administrators to communicate plan information to plan participants. The first is contained in § 8.1.3, and it requires the plan administrator to make all disclosures required by ERISA. See App. 19 (requiring plan administrator to file required reports with the appropriate governmental agencies and to "comply with requirements of law for disclosure of Plan provisions and other information relating to the Plan to Employees and other interested parties"). The second, entitled "*Communication to Employees*," is contained in § 10 of the plan. That section requires the company, "[i]n accordance with the requirements of the Act, [to] communicate the principal terms of the Plan to the Employees" and to "make available for inspection, by Employees and their beneficiaries, during reasonable hours at the principal office of the Company and at such other places as may be required by the Act, a copy of the Plan, the Trust Agreement, and of such other documents as may be required by the Act." *Id.*, at 21. The only other responsibility the plan expressly delegates to the plan administrator

Because an employer's representations about the company's financial prospects or about the possible impact of ordinary business transactions on the security of unvested welfare benefits do not involve execution or implementation of duties imposed by the plan or the Act, and because these are the types of representations employers regularly make in the ordinary course of running a business, I would not hold that such communications involve plan administration. The untruthfulness of a statement cannot magically transform it from a nonfiduciary representation into a fiduciary one; the determinative factor is not truthfulness but the capacity in which the statement is made.

B

With only passing reference to the relevant statutory text, the majority discards the limits that Congress imposed on fiduciary status and replaces them with a far broader standard plucked from the common law of trusts. See *ante*, at 502. Relying on trust treatises and our decision in *Central States, Southeast & Southwest Areas Pension Fund* v. *Central Transport, Inc.*, 472 U. S. 559 (1985), the majority concludes that a person engages in plan administration whenever he exercises " 'powers as are necessary or appropriate for the carrying out of the purposes' of the trust." *Ante*, at

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is the administration of claims pursuant to the plan's claims procedure, which is described in § 11 of the plan. See generally *id.*, at 18–20 (section of plan entitled "*Allocation of Responsibilities Among Named Fiduciaries*," which enumerates all of the fiduciary obligations imposed by the plan).

Though I do not claim that plan administration is necessarily limited to performance of duties imposed by the plan documents, see *ante*, at 504, the majority's response to this straw man argument—that ERISA's fiduciary obligations would be meaningless if only the performance of duties imposed by the plan qualified as plan administration—is nonetheless flawed. The majority's argument is based on the mistaken assumption that a plan cannot assign discretionary authority to plan administrators (the exercise of which would clearly be subject to fiduciary duties under the Act), an assumption flatly contradicted both by the common law of trusts and by common sense. See Bogert & Bogert, *supra* n. 6, § 552.

502 (quoting 3 A. Scott & W. Fratcher, Law of Trusts § 186, p. 6 (4th ed. 1988)).[13]

The majority's approach is flawed in at least two respects. First, the standard that it borrows from the common law of trusts is not the common-law standard for determining whether a person is a fiduciary. Rather, it is the standard the common law uses to define the scope of a fiduciary's authority once it is settled that a person is a fiduciary. Thus, the Court inexplicably takes a common-law standard that presumes that a person is a fiduciary and applies it to determine whether, under the statute, that person is a fiduciary in the first place. The majority's approach ignores the patent differences between the definition of a fiduciary under ERISA and the common law, and in the process expands the activities that are governed by fiduciary standards beyond those designated by the statutory text.[14]

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[13] Also, the majority twice looks to § 404(a) in attempting to determine the scope of fiduciary status under ERISA. See *ante*, at 502, 511. Specifically, the majority relies on § 404(a)(1)(D), which requires a fiduciary to discharge his duties "in accordance with the documents and instruments governing the plan." But § 404(a)(1)(D) does not determine whether a person is acting as a fiduciary. Like the other provisions of § 404, it merely establishes a ground rule for functions performed by a person deemed to be a fiduciary under § 3(21)(A). The majority cannot rely on § 404(a)(1)(D) to determine whether a person has assumed fiduciary status, since that provision applies only after it has been established that a person is a fiduciary.

[14] The majority's reliance on *Central States, Southeast & Southwest Areas Pension Fund* v. *Central Transport, Inc.*, 472 U. S. 559 (1985) (cited *ante*, at 502), illustrates the flaw in the majority's approach. Although we quoted there the same passage from the Scott treatise that the majority substitutes for the text of § 3(21)(A), see *Central States*, *supra*, at 570, the Court was not attempting to determine in that case, as we are here, whether a person was acting as a fiduciary with respect to a plan under § 3(21)(A). There was no question that the trustee in *Central States* was a fiduciary under § 3(21)(A), and there was no question that the audit the trustees wished to perform was a fiduciary function. The only question in *Central States* was whether the plan trustees, who were admittedly

Second, the majority disregards any possible distinction between the respective roles of an ERISA trustee and an ERISA plan administrator that might counsel against the wholesale importation, into the statutory definition of plan administration, of common-law rules governing trustees. Under ERISA, a plan trustee is charged with "exclusive authority and discretion to manage and control the assets of the plan." §403, 29 U. S. C. §1103. Because the trustee's authority over plan assets is exclusive, a plan administrator under ERISA lacks the pre-eminent responsibility of the common-law trustee, namely, the management of the trust corpus. Thus, while it may be true under the common law that a trustee has such powers as are necessary to further the purposes of the trust, it does not automatically follow that the administrator of a benefits plan (who by definition lacks authority over plan assets) possesses all authority "necessary or appropriate" for carrying out the purposes of the plan. And the majority cites no authority for its assumption that an ERISA plan administrator is the functional equivalent of a common-law trustee. See *ante*, at 502, 505, 506.

At bottom, the majority's analysis is an exercise in question begging. If speculating about the company's financial stability or the security of plan benefits does not involve discretionary authority in plan administration, it is wholly irrelevant that providing such information "would seem" to be related to "carrying out an important plan purpose." *Ante*, at 502. That a communication was "about benefits," *ante*, at 501, or an activity was of a "plan-related nature," *ante*, at 503, is also of little significance unless the act involved plan administration. The whole purpose of §3(21)(A)(iii) is to

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fiduciaries, were authorized by the plan to perform this concededly fiduciary function. Like the common-law principle cited therein, the *Central States* dicta only becomes relevant once it is settled that a person is a fiduciary.

make clear that one who engages even in benefit-related or plan-related conduct is a fiduciary only "to the extent" he has discretionary authority to administer the plan. See *John Hancock Mut. Life Ins. Co.* v. *Harris Trust and Sav. Bank*, 510 U. S. 86, 104–105 (1993) (Congress uses the phrase "to the extent" to make clear that "to *some* extent" actions that would otherwise be included in a general category were meant to be excluded). The majority's end run around this important limitation by reference to inapplicable principles from the common law of trusts is unpersuasive.

The majority confirms that the statutory text is largely irrelevant under its approach by indulging the notion that a plan participant's subjective understanding of the employers' conduct is relevant in determining whether an employer's actions qualify as "plan administration" under ERISA. The majority concludes that Varity was engaged in plan administration in part on the ground that "reasonable employees . . . could have thought" that Varity was administering the plan. *Ante*, at 503. ERISA does not make a person a fiduciary to the extent reasonable employees believe him to be a fiduciary, but rather to the extent "he has any discretionary authority or discretionary responsibility in the administration of such plan." §3(21)(A)(iii). Under ERISA, an act either involves plan administration, or it does not; whether the employees have a subjective belief that the employer is acting as a fiduciary cannot matter. A rule turning on the subjective perceptions of plan participants is simply inconsistent with ERISA's fundamental structure, which is built not upon perceptions, but "around reliance on the face of written plan documents." *Curtiss-Wright Corp.*, 514 U. S., at 83.[15]

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[15] As petitioner observed: "It is difficult to imagine a situation involving *any* communication in any 'context' as to future business decisions that might affect a participant's benefit choices that could not 'reasonably' be viewed by employees as an act of a plan administrator, especially when employees directly ask about such intentions." Reply Brief for Petitioner 18 (emphasis in original).

C

Finally, the majority's conclusion that a fiduciary duty was breached is based upon an inaccurate assessment of the record in this case. It is true that Varity expressed falsely optimistic forecasts about its new venture's prospects for success in an effort to entice employees to transfer to the new company. But the majority, I believe, tells only part of the story when it states that "the basic message conveyed to the employees was that transferring from Massey-Ferguson to Massey Combines would not significantly undermine the security of their benefits." *Ante*, at 501. As I read the record, the message Varity conveyed was that the security of jobs and benefits would be contingent upon the success of the new company. Varity repeatedly informed its employees that "[e]mployment conditions in the future will depend on our ability to make Massey Combines Corporation a success and *if changes are considered necessary or appropriate, they will be made.*" App. 76 (emphasis added).[16] The majority also fails to note that the plan documents expressly reserved to Varity the right "[t]o Terminate, Suspend, Withdraw, Amend or Modify the Plan in Whole or in Part." *Id.*,

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[16] See also App. 80 (transcript of videotape message to employees) ("When you transfer your employment to the Massey Combines Corporation, pay levels and benefit programs will remain unchanged. . . . Employment conditions in the future will depend on the success of the Massey Combines Corporation and should changes be deemed appropriate or necessary, they will be made"); *id.*, at 82 (cover letter to employees) ("When you accept employment with Massey Combines Corporation, pay levels and benefit programs will remain unchanged. . . . Employment conditions in the future will depend on our ability to make Massey Combines Corporation a success, and if changes are considered necessary or appropriate, they will be made").

When read in light of the District Court's finding that the combines industry had been in a state of "unprecedented decline [for the four years prior to the creation of MCC] . . . caused in significant part by an extreme depression in this country's agricultural economy," App. to Pet. for Cert. 53a, the company's qualifications take on even greater significance.

at 43. The Court thus holds today that an employer breaches a fiduciary obligation to participants in an ERISA plan when it makes optimistic statements about the company's financial condition and thereby implies that unvested welfare benefits will be secure, even though the employer simultaneously informs plan participants that changes will be made if economic conditions so require and the plan documents expressly authorize the employer to terminate the unvested welfare benefits at any time. I cannot agree with this result.

III

I do not read the Court's opinion to extend fiduciary liability to all instances in which the Court's rationale would logically apply. Indeed, the Court's awkward articulation of its holding confirms that this case is quite limited. See *ante*, at 503 ("We conclude . . . that the factual context in which the statements were made, combined with the plan-related nature of the activity, engaged in by those who had plan-related authority to do so, together provide sufficient support for the District Court's legal conclusion that Varity was acting as a fiduciary"); *ante*, at 505 ("[W]e hold that making intentional representations about the future of plan benefits *in that context* is an act of plan administration") (emphasis added).

If not limited to cases involving facts similar to those presented in this case, the Court's expansion of recovery for fiduciary breach to individuals and its substantial broadening of the definition of fiduciary will undermine the careful balance Congress struck in enacting ERISA. See *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U. S., at 54 (ERISA's "civil enforcement scheme . . . represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans"); *Mertens*, 508 U. S., at 262–263. Although Congress sought to guarantee that employees receive the welfare benefits promised by employers, Congress was also

aware that if the cost of providing welfare benefits rose too high, employers would not provide them at all. See *Russell*, 473 U. S., at 148, n. 17 (warning against expanding liability beyond that intended by Congress, "lest the cost of federal standards discourage the growth of private pension plans") (citation omitted); *Hozier* v. *Midwest Fasteners, Inc.*, 908 F. 2d 1155, 1170 (CA3 1990) (recognizing "Congress's judgment that employees themselves are best served by an enforcement regime that minimizes employers' expected liability for reporting and disclosure violations—and with it, the disincentives against creating employee benefit plans in the first place").[17] Application of the Court's holding in the many cases in which it may logically apply could result in significantly increased liability, or at the very least heightened litigation costs, and an eventual reduction in plan benefits to accommodate those costs. Fortunately, the import of the Court's holdings appears to be far more modest, and courts should not feel compelled to bind employers to the strict fiduciary standards of ERISA just because an ordinary business decision turns out to have an adverse impact on the plan.

I respectfully dissent.

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[17] That is presumably why Congress exempted welfare benefits from the stringent, and costly, vesting requirements imposed on pension benefits. See *Curtiss-Wright Corp.*, 514 U. S., at 78.

Reporter's Note

The next page is purposely numbered 801. The numbers between 539 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 2, 1995, THROUGH MARCH 18, 1996

OCTOBER 2, 1995

Affirmed on Appeal

No. 94–1922. RURAL WEST TENNESSEE AFRICAN-AMERICAN AFFAIRS COUNCIL, INC., ET AL. *v.* SUNDQUIST, GOVERNOR OF TENNESSEE, ET AL. Affirmed on appeal from D. C. W. D. Tenn. JUSTICE STEVENS would note probable jurisdiction and set case for oral argument. Reported below: 877 F. Supp. 1096.

Appeal Dismissed

No. 95–132. VOINOVICH, GOVERNOR OF OHIO, ET AL. *v.* QUILTER, SPEAKER PRO TEMPORE OF OHIO HOUSE OF REPRESENTATIVES, ET AL. Appeal from D. C. N. D. Ohio dismissed. The stay granted by this Court on September 8, 1995 [515 U. S. 1184], is continued pending final disposition by this Court of the appeal in No. 95–378, *Voinovich, Governor of Ohio, et al.* v. *Quilter, Speaker Pro Tempore of Ohio House of Representatives, et al.*

Vacated and Remanded on Appeal

No. 94–2032. FRANKLIN ET AL. *v.* LAWRIMORE ET AL. Appeal from D. C. S. C. Judgment vacated and case remanded to the District Court for entry of a fresh judgment from which a timely appeal may be taken to the United States Court of Appeals for the Fourth Circuit.

Certiorari Granted—Vacated and Remanded

No. 94–1871. EXXON CORP. *v.* YOUELL ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wilton* v. *Seven Falls Co.*, 515 U. S. 277 (1995). JUSTICE BREYER took no part in the consideration or decision of this case. Reported below: 48 F. 3d 105.

No. 94–1926. KAPOOR *v.* UNITED STATES. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further

consideration in light of *United States* v. *Gaudin*, 515 U. S. 506 (1995). Reported below: 54 F. 3d 765.

No. 94–1931. EDMOND *v.* UNITED STATES. C. A. Armed Forces. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Ryder* v. *United States*, 515 U. S. 177 (1995). Reported below: 41 M. J. 419.

No. 94–2090. PACESETTER CONSTRUCTION CO., INC. *v.* CARPENTERS 46 NORTHERN CALIFORNIA COUNTIES CONFERENCE BOARD. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *First Options of Chicago, Inc.* v. *Kaplan*, 514 U. S. 938 (1995). Reported below: 51 F. 3d 281.

Certiorari Dismissed

No. S–2. REES *v.* SUPERINTENDENT OF THE VIRGINIA STATE PENITENTIARY. C. A. 4th Cir. Certiorari dismissed. Reported below: 341 F. 2d 859.

No. 95–5066. BYRON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari dismissed. Reported below: 164 Ill. 2d 279, 647 N. E. 2d 946.

Miscellaneous Orders. (For revisions to the Rules of this Court effective this date, see 515 U. S. 1195.)

No. A–274. RELIGIOUS TECHNOLOGY CENTER *v.* F. A. C. T. NET, INC., ET AL. D. C. Colo. Application for stay pending appeal, addressed to JUSTICE SOUTER and referred to the Court, denied.

No. D–1526. IN RE DISBARMENT OF RUTLEDGE. Disbarment entered. [For earlier order herein, see 514 U. S. 1013.]

No. D–1531. IN RE DISBARMENT OF MADDOX. Disbarment entered. [For earlier order herein, see 514 U. S. 1060.]

No. D–1564. IN RE DISBARMENT OF MURASKI. Motion to defer further consideration of rule to show cause granted. [For earlier order herein, see 515 U. S. 1156.]

No. D–1571. IN RE DISBARMENT OF PECK. Disbarment entered. [For earlier order herein, see 515 U. S. 1172.]

No. D–1573. IN RE DISBARMENT OF HOPPMANN. Motion to defer further consideration of rule to show cause granted. [For earlier order herein, see 515 U. S. 1172.]

No. M–77 (O. T. 1994). MARIAN *v.* SCOTT ET AL. Motion for reconsideration of order denying leave to file petition for writ of certiorari out of time [515 U. S. 1129] denied.

No. M–78 (O. T. 1994). ARNETTE *v.* ALLSTATE INSURANCE CO. Motion for reconsideration of order denying leave to file petition for writ of certiorari out of time [515 U. S. 1129] denied.

No. M–79 (O. T. 1994). HOLDER *v.* HARLEM MEN'S SHELTER;
No. M–1. WHITEHEAD *v.* DEUTSCH, DIRECTOR OF CENTRAL INTELLIGENCE;
No. M–2. BUOSCIO *v.* SPADE ET UX.;
No. M–3. MOHAMMED *v.* SCHEVE ET UX.;
No. M–4. LEWIS *v.* UNITED STATES;
No. M–5. REYNOLDS, WARDEN *v.* BANKS;
No. M–6. PERRY *v.* HOUSE OF REPRESENTATIVES;
No. M–7. STAGE *v.* DEPARTMENT OF LABOR;
No. M–8. ZAPON ET AL. *v.* DEPARTMENT OF JUSTICE;
No. M–9. DOE *v.* WASHINGTON;
No. M–10. WHITEHEAD *v.* DEUTSCH, DIRECTOR OF CENTRAL INTELLIGENCE;
No. M–11. HUNT *v.* UNITED STATES;
No. M–13. FRASER *v.* PENNSYLVANIA SYSTEM OF HIGHER EDUCATION ET AL.; and
No. M–14. MILES *v.* GRAMLEY, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–12. GULLEDGE *v.* KANSAS. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and expenses granted, and the River Master is awarded $3,999.78 for the period April 1 through June 30, 1995, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 514 U. S. 1095.]

No. 94–1268. JOINT SCHOOL DISTRICT NO. 241 ET AL. *v.* HARRIS, ON HER OWN BEHALF AND ON BEHALF OF HER TWO CHILDREN, BUTLER AND HARRIS, ET AL.; and
No. 94–1314. CITIZENS PRESERVING AMERICA'S HERITAGE, INC., ET AL. *v.* HARRIS, ON HER OWN BEHALF AND ON BEHALF OF HER TWO CHILDREN, BUTLER AND HARRIS, ET AL., 515 U. S. 1154. Motion of respondents to retax costs denied.

No. 94–1283 (D–1590). QUALLS *v.* REGIONAL TRANSPORTATION DISTRICT ET AL.; and QUALLS ET AL. *v.* REGIONAL TRANSPORTATION DISTRICT ET AL. C. A. 10th Cir. Motion of respondents Regional Transportation District et al. for an order to show cause granted. It is ordered that David L. Smith, of Denver, Colo., shall within 21 days of this order pay respondents $500 as ordered by this Court on March 6, 1995 [514 U. S. 1010], and show cause in writing why he should not be disbarred from the practice of law in this Court or otherwise disciplined for failure to comply with an order of this Court. David L. Smith is hereby suspended from practice before this Court pending the timely filing and consideration of his response to the order to show cause.

No. 94–1412. FUENTES *v.* UNITED STATES, 515 U. S. 1102. The Solicitor General is invited to file a response to the petition for rehearing within 30 days.

No. 94–1511. LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* CASEY ET AL. C. A. 9th Cir. [Certiorari granted, 514 U. S. 1126.] Further consideration of motion of respondents to strike Appendix A of brief of petitioners deferred to hearing of case on the merits.

No. 94–1868. NORTH CAROLINA POWER *v.* NORTH CAROLINA UTILITIES COMMISSION. Sup. Ct. N. C.; and

No. 95–27. MERRILL ET AL. *v.* BARBOUR. C. A. D. C. Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 94–9688. VEY *v.* ROMOFF ET AL. C. A. 3d Cir.; and

No. 95–5139. LUNA *v.* SUTHERLAND ET AL. C. A. 6th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until October 23, 1995, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 94–9729. CHERSIN ET AL. *v.* MACHINE TOOL FINANCE CORP. ET AL. Dist. Ct. App. Fla., 4th Dist. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 23, 1995, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 94–9253. IN RE SHEEHY ET UX. Super. Ct. Pa. Petition for writ of common-law certiorari denied.

No. 94–9789. IN RE HOLLINGSWORTH;
No. 95–5296. IN RE JOHNSON;
No. 95–5471. IN RE TAVARES;
No. 95–5506. IN RE HINES;
No. 95–5516. IN RE LONG;
No. 95–5604. IN RE KENNON;
No. 95–5824. IN RE WOOD; and
No. 95–5855. IN RE WEST. Petitions for writs of habeas corpus denied.

No. 94–2094. IN RE LIGHTER, DBA WELLS FARGO PROTECTIVE ALARM SERVICES CO.;
No. 94–2103. IN RE CHAR YIGH MARINE (PANAMA) S. A.;
No. 94–2129. IN RE HUTCHINSON, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HUTCHINSON, DECEASED, ET AL.;
No. 94–9282. IN RE FRANKLIN;
No. 94–9405. IN RE ECHOLS;
No. 94–9526. IN RE FRANKLIN;
No. 94–9560. IN RE PETERSON;
No. 94–9643. IN RE BRYANT;
No. 94–9653. IN RE LEE;
No. 95–269. IN RE ALCAN ALUMINUM CORP.;
No. 95–5175. IN RE SHORES;
No. 95–5184. IN RE THORNWELL;
No. 95–5228. IN RE TAMAYO;
No. 95–5236. IN RE MOORE;
No. 95–5452. IN RE FITZPATRICK;
No. 95–5458. IN RE CROWDER ET AL.;
No. 95–5469. IN RE SMITH; and
No. 95–5512. IN RE MOSES. Petitions for writs of mandamus denied.

No. 94–9398. IN RE MAROPULOS;
No. 94–9701. IN RE HASAN;
No. 94–9749. IN RE VINCENT; and
No. 95–5486. IN RE JOHNSON. Petitions for writs of prohibition denied.

Certiorari Denied. (See also No. 94–9253, *supra.*)

No. 94–1666. FREDERICK *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 46 F. 3d 1116.

No. 94–1689. GILBERT ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 10th Cir. Certiorari denied. Reported below: 45 F. 3d 1391.

No. 94–1720. GANDARILLAS-ZAMBRANA, AKA GANDARILLAS, AKA GANDARILLOS *v.* BOARD OF IMMIGRATION APPEALS. C. A. 4th Cir. Certiorari denied. Reported below: 44 F. 3d 1251.

No. 94–1722. JULIA SAAVEDRA BALMACEDA, INC., ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 46 F. 3d 279.

No. 94–1723. WARTSKI ET AL. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 47 F. 3d 1159.

No. 94–1728. FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP INDIAN RESERVATION *v.* MAZUREK, ATTORNEY GENERAL OF MONTANA, ET AL.; and

No. 94–2092. MAZUREK, ATTORNEY GENERAL OF MONTANA, ET AL. *v.* FORT BELKNAP INDIAN COMMUNITY OF THE FORT BELKNAP INDIAN RESERVATION. C. A. 9th Cir. Certiorari denied. Reported below: 43 F. 3d 428.

No. 94–1734. LANSING DAIRY, INC., ET AL. *v.* GLICKMAN, SECRETARY OF AGRICULTURE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 39 F. 3d 1339.

No. 94–1740. PACIFIC NORTHWEST GENERATING COOPERATIVE *v.* NORTHWEST POWER PLANNING COUNCIL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 1371.

No. 94–1756. FERRANTE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 47 F. 3d 1158.

No. 94–1760. 60 KEY CENTRE, INC. *v.* ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 47 F. 3d 55.

No. 94–1763. MUIRHEAD ET AL. *v.* FARMERS HOME ADMINISTRATION ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 42 F. 3d 964.

No. 94–1770. DAVILA ET AL. *v.* COUNTY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–1772. RETAIL, WHOLESALE & DEPARTMENT STORE UNION, LOCAL NO. 441 *v.* INTERSTATE BRANDS CORP., MERITA BREAD DIVISION. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 1159.

No. 94–1778. CITIZENS BANK OF CLOVIS *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. D. C. Cir. Certiorari denied. Reported below: 50 F. 3d 1096.

No. 94–1796. ALBERTSON'S, INC. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 537.

No. 94–1804. WILLIAMS ET AL. *v.* ASHLAND ENGINEERING ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 45 F. 3d 588.

No. 94–1807. MCCLELLAN ECOLOGICAL SEEPAGE SITUATION ET AL. *v.* PERRY, SECRETARY OF DEFENSE. C. A. 9th Cir. Certiorari denied. Reported below: 47 F. 3d 325.

No. 94–1817. ALACARE HOME HEALTH SERVICES, INC. *v.* GADSDEN REGIONAL MEDICAL CENTER, FKA BAPTIST HOSPITAL OF GADSDEN, INC. Ct. Civ. App. Ala. Certiorari denied. Reported below: 655 So. 2d 995.

No. 94–1823. PIERCE *v.* REICH, SECRETARY OF LABOR. C. A. 6th Cir. Certiorari denied. Reported below: 45 F. 3d 431.

No. 94–1825. NATIONAL COMMODITY & BARTER ASSN. ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 42 F. 3d 1406.

No. 94–1827. ZIPPERER *v.* CITY OF FORT MYERS ET AL.; and No. 94–1997. CITY OF FORT MYERS *v.* ZIPPERER. C. A. 11th Cir. Certiorari denied. Reported below: 41 F. 3d 619.

No. 94–1831. ALLEN ET AL. *v.* PAINEWEBBER, INC. C. A. 4th Cir. Certiorari denied. Reported below: 45 F. 3d 427.

No. 94–1842. MYERS & ASSOCIATES, LTD., ET AL. *v.* TRINITY INDUSTRIES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 41 F. 3d 229.

No. 94–1845. NORTON ET AL. *v.* HOUSTON INDUSTRIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 530.

No. 94–1846. BARNARD *v.* JACKSON COUNTY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 43 F. 3d 1218.

No. 94–1848. BMMG, INC., ET AL. *v.* AMERICAN TELECAST CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 1398.

No. 94–1849. EAGLESTON *v.* GUIDO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 41 F. 3d 865.

No. 94–1850. CZEKAJ ET AL. *v.* CALIFORNIA. App. Dept., Super. Ct. Cal., Santa Barbara County. Certiorari denied.

No. 94–1851. M & J COAL CO. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 47 F. 3d 1148.

No. 94–1853. CASTRIOTTA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 111 Nev. 67, 888 P. 2d 927.

No. 94–1854. BARKAUSKAS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 260 Ill. App. 3d 1113, 675 N. E. 2d 659.

No. 94–1856. CANDELA *v.* WOODS. C. A. 2d Cir. Certiorari denied. Reported below: 47 F. 3d 545.

No. 94–1858. SPOTTEDWOLF ET AL. *v.* WOODS PETROLEUM CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 47 F. 3d 1032.

No. 94–1859. POWELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 897 S. W. 2d 307.

No. 94–1861. MARTINEZ MUSQUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 F. 3d 927.

No. 94–1863. VERSA PRODUCTS CO., INC. *v.* BIFOLD CO. (MANUFACTURING) LTD. C. A. 3d Cir. Certiorari denied. Reported below: 50 F. 3d 189.

No. 94–1864. HENNESSEY ET AL. *v.* BLALACK ET AL. (three judgments). C. A. 5th Cir. Certiorari denied. Reported below:

49 F. 3d 728 (first judgment); 47 F. 3d 427 (second judgment) and 425 (third judgment).

No. 94–1865. FIRST PACIFIC BANK ET AL. *v.* GILLERAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 40 F. 3d 1023.

No. 94–1866. NORTHWEST TITLE & ESCROW CORP. *v.* EDINA REALTY, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 1224.

No. 94–1867. AMERICAN LIFE LEAGUE, INC., ET AL. *v.* RENO, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 47 F. 3d 642.

No. 94–1869. IN RE EUBANKS, DBA LAWYER COMPLAINT SERVICE. Sup. Ct. Fla. Certiorari denied. Reported below: 651 So. 2d 1193.

No. 94–1872. DEIBLER ET UX. *v.* ATLANTIC PROPERTIES GROUP, INC., ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 652 A. 2d 553.

No. 94–1874. PORTER-COOPER *v.* DALKON SHIELD CLAIMANTS TRUST. C. A. 8th Cir. Certiorari denied. Reported below: 49 F. 3d 1285.

No. 94–1876. MAUK ET UX. *v.* ENGLE, DIRECTOR, WASHINGTON COUNTY DEPARTMENT OF SOCIAL SERVICES. Ct. Sp. App. Md. Certiorari denied. Reported below: 101 Md. App. 274, 646 A. 2d 1036.

No. 94–1877. MAISONET *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 209 App. Div. 2d 297, 618 N. Y. S. 2d 718.

No. 94–1879. ISLAM ET AL. *v.* CREATIVE TOURS MICRONESIA, INC. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 1102.

No. 94–1880. HOMESTEAD INSURANCE CO. *v.* ZOPPO ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 71 Ohio St. 3d 552, 644 N. E. 2d 397.

No. 94–1884. WOLFE *v.* ALLEGHENY BEVERAGE CORP. ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 166 Pa. Commw. 646, 646 A. 2d 762.

No. 94–1886. WALDAU *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 59 F. 3d 181.

No. 94–1887. WILLINGHAM ET AL. *v.* SAC AND FOX NATION. C. A. 10th Cir. Certiorari denied. Reported below: 47 F. 3d 1061.

No. 94–1888. SIME ET AL. *v.* CITY OF ROHNERT PARK. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–1889. MIELE ET AL. *v.* PERINI CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 46 F. 3d 1118.

No. 94–1891. THACKER *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 889 S. W. 2d 380.

No. 94–1892. DAMIAN ET AL. *v.* GALAYDA. Sup. Ct. Ohio. Certiorari denied. Reported below: 71 Ohio St. 3d 421, 644 N. E. 2d 298.

No. 94–1894. CADLE CO. *v.* BANKSTON & LOBINGIER ET AL. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 868 S. W. 2d 918.

No. 94–1895. PAYNE ET AL. *v.* KAPLAN, ADMINISTRATOR OF THE ESTATE OF KAPLAN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 49 F. 3d 1363.

No. 94–1896. ROMERO ET UX. *v.* KMART CORP., DBA KMART DISCOUNT STORE NO. 7061. C. A. 5th Cir. Certiorari denied. Reported below: 44 F. 3d 1005.

No. 94–1897. FOX *v.* DEPARTMENT OF JUSTICE. C. A. 9th Cir. Certiorari denied.

No. 94–1898. GRYNBERG *v.* KLEIN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 44 F. 3d 1497.

No. 94–1901. LA SOCIETE GENERALE IMMOBILIERE ET AL. *v.* MINNEAPOLIS COMMUNITY DEVELOPMENT AGENCY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 44 F. 3d 629.

No. 94–1902. FAUSTO-RENDON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1146.

No. 94–1903. HOCHBERG ET AL. *v.* HOWLETT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 50 F. 3d 3.

No. 94–1904. RADIO ASSOCIATION DEFENDING AIRWAVE RIGHTS, INC., ET AL. *v.* DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 794.

No. 94–1905. GALLO-CHAMORRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 502.

No. 94–1907. WILSON *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 43 F. 3d 211.

No. 94–1908. MANHARD *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 85 N. Y. 2d 193, 647 N. E. 2d 1308.

No. 94–1909. WINPENNY *v.* WINPENNY. Super. Ct. Pa. Certiorari denied. Reported below: 434 Pa. Super. 348, 643 A. 2d 677.

No. 94–1910. DYKEMA *v.* VOLKSWAGENWERK AG ET AL. Ct. App. Wis. Certiorari denied. Reported below: 189 Wis. 2d 206, 525 N. W. 2d 754.

No. 94–1911. ROBINSON *v.* BENTON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 47 F. 3d 1156.

No. 94–1912. METCALF, DIRECTOR, VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES *v.* REHABILITATION ASSOCIATION OF VIRGINIA, INC. C. A. 4th Cir. Certiorari denied. Reported below: 42 F. 3d 1444.

No. 94–1913. EDWARDS *v.* INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA (UPGWA) ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 46 F. 3d 1047.

No. 94–1914. COZAD *v.* RUBIN, SECRETARY OF THE TREASURY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 1231.

No. 94–1917. GUMBUS ET AL. *v.* UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION, AFL–CIO/CLC, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1168.

No. 94–1918. TEXANS UNITED EDUCATION FUND *v.* TEXACO INC. ET AL. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 858 S. W. 2d 38.

No. 94–1919. TAP ELECTRICAL CONTRACTING SERVICE, INC. *v.* SWEENEY, NEW YORK STATE COMMISSIONER OF LABOR. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 207 App. Div. 2d 547, 616 N. Y. S. 2d 86.

No. 94–1920. OKUN ET UX. *v.* OKLAHOMA. Ct. App. Okla. Certiorari denied.

No. 94–1921. BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 48 F. 3d 520.

No. 94–1923. PRUDENTIAL INSURANCE COMPANY OF AMERICA *v.* LAI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 1299.

No. 94–1924. HAYES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 40 F. 3d 362.

No. 94–1925. SHORT HILLS ASSOCIATES, FKA PRUTAUB JOINT VENTURE *v.* NEW JERSEY COALITION AGAINST WAR IN THE MIDDLE EAST ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 138 N. J. 326, 650 A. 2d 757.

No. 94–1927. ALBERT *v.* SOUTHERN PACIFIC TRANSPORTATION CO. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 30 Cal. App. 4th 529, 35 Cal. Rptr. 2d 777.

No. 94–1928. CONAGRA, INC., ET AL. *v.* OSCAR MAYER FOODS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 45 F. 3d 443.

No. 94–1929. ALLSUP'S CONVENIENCE STORES, INC. *v.* JOHNSEN. Ct. App. N. M. Certiorari denied. Reported below: 119 N. M. 245, 889 P. 2d 853.

No. 94–1930. ASSOCIATION OF NATIONAL ADVERTISERS, INC., ET AL. *v.* LUNGREN, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 44 F. 3d 726.

No. 94–1932. DUPLITRONICS, INC. *v.* CONCEPT DESIGN ELECTRONICS & MANUFACTURING, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 52 F. 3d 342.

No. 94–1933. SOBIECKI *v.* UNITED STATES; and

No. 94–9078. BROZEK-LUKASZUK ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 42 F. 3d 387.

No. 94–1934. MYERS, WARDEN, ET AL. *v.* JIMINEZ. C. A. 9th Cir. Certiorari denied. Reported below: 40 F. 3d 976.

No. 94–1936. SCHULTZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 46 F. 3d 1152.

No. 94–1937. COALITION FOR FREE AND OPEN ELECTIONS ET AL. *v.* MCELDERRY, CHAIRMAN OF THE OKLAHOMA STATE ELECTION BOARD, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 493.

No. 94–1938. BARRICK GOLD EXPLORATION, INC., ET AL. *v.* HUDSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 832.

No. 94–1943. ALEXANDER *v.* LOUISIANA STATE BOARD OF MEDICAL EXAMINERS. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 644 So. 2d 238.

No. 94–1944. MOSS *v.* BERNARD. C. A. 2d Cir. Certiorari denied. Reported below: 50 F. 3d 4.

No. 94–1945. PERKINS, INDIVIDUALLY AND ON BEHALF OF PENN *v.* GUEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 46 F. 3d 478.

No. 94–1946. PENNSYLVANIA SECRETARY OF PUBLIC WELFARE *v.* IDELL S. C. A. 3d Cir. Certiorari denied. Reported below: 46 F. 3d 325.

No. 94–1947. LOVE *v.* PEPERSACK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 47 F. 3d 120.

No. 94–1948. HARREL *v.* UNIVERSITY OF HOUSTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 44 F. 3d 1004.

No. 94–1951. ALF ET AL. *v.* FLORIDA; ALSPAUGH ET AL. *v.* FLORIDA; and DUPUY ET AL. *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 651 So. 2d 691 (first judgment), 1211 (second judgment), and 692 (third judgment).

No. 94–1952. CITY OF HAYWARD, CALIFORNIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 36 F. 3d 832.

No. 94–1953. STEAMSHIP CLERKS UNION, LOCAL 1066 *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 1st Cir. Certiorari denied. Reported below: 48 F. 3d 594.

No. 94–1954. KISSINGER ET AL. *v.* ARKANSAS STATE HIGHWAY COMMISSION. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 1224.

No. 94–1955. COUNTY OF BOYD ET AL. *v.* US ECOLOGY, INC. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 359.

No. 94–1956. BRANSON *v.* FLETCHER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1227.

No. 94–1957. HAYES, SPOUSE OF HAYES AND TUTRIX FOR HAYES ET AL. *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 44 F. 3d 377.

No. 94–1958. WAL-MART STORES, INC., DBA SAM'S WHOLESALE CLUB *v.* FOLLETTE ET UX., INDIVIDUALLY AND AS NEXT FRIENDS OF FOLLETTE, A MINOR CHILD. C. A. 8th Cir. Certiorari denied. Reported below: 41 F. 3d 1234 and 47 F. 3d 311.

No. 94–1959. WILLIAMS *v.* GARRAGHTY. Sup. Ct. Va. Certiorari denied. Reported below: 249 Va. 224, 455 S. E. 2d 209.

No. 94–1960. FREEMAN ET VIR *v.* SIMON ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 47 F. 3d 1156.

No. 94–1961. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 727.

No. 94–1962. KIEFFER *v.* BANK OF AMERICA ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–1963. NESLADEK, TRUSTEE FOR THE HEIRS AND NEXT OF KIN OF NESLADEK, DECEASED *v.* FORD MOTOR CO. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 734.

No. 94–1965. CHARASH *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–1967. MONTOYA ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 45 F. 3d 1286.

No. 94–1970. GULF SOUTH MEDICAL & SURGICAL INSTITUTE ET AL. *v.* AETNA LIFE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 39 F. 3d 520.

No. 94–1971. SHILEY, INC., ET AL. *v.* MICHAEL. C. A. 3d Cir. Certiorari denied. Reported below: 46 F. 3d 1316.

No. 94–1972. FOSTER *v.* NORTHWESTERN ELECTRIC COOPERATIVE, INC. Ct. App. Okla. Certiorari denied.

No. 94–1974. KOUKIOS, DBA SCIENTIFIC INFORMATION SYSTEMS *v.* MARKETING DYNAMICS INC., DBA LITE AMERICA. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 94–1975. BARDNEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 46 F. 3d 1134.

No. 94–1976. ALASKA STATE LEGISLATURE *v.* ALASKA ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–1977. JERSEY CENTRAL POWER & LIGHT CO. *v.* FREEHOLD COGENERATION ASSOCIATES, L. P.; and
No. 94–1995. NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE *v.* FREEHOLD COGENERATION ASSOCIATES, L. P., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 44 F. 3d 1178.

No. 94–1979. LUSSIER *v.* RUNYON, POSTMASTER GENERAL. C. A. 1st Cir. Certiorari denied. Reported below: 50 F. 3d 1103.

No. 94–1980. WILLIAMS ET AL. *v.* POLLARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 44 F. 3d 433.

No. 94–1981. BRASWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 1127.

No. 94–1982. RATLIFF *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 94–1983. CAZEY *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 43 F. 3d 669.

No. 94–1984. GENSBURG ET AL. *v.* MILLER ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 31 Cal. App. 4th 512, 37 Cal. Rptr. 2d 97.

No. 94–1986. VISWANATHAN *v.* MISSISSIPPI COUNTY COMMUNITY COLLEGE BOARD OF TRUSTEES. Sup. Ct. Ark. Certiorari denied. Reported below: 318 Ark. 810, 887 S. W. 2d 531.

No. 94–1987. GLOVER BOTTLED GAS CORP. ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 47 F. 3d 1230.

No. 94–1989. LITTON SYSTEMS, INC. *v.* CARROLL ET AL.; and No. 95–112. CARROLL ET AL. *v.* LITTON SYSTEMS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 47 F. 3d 1164.

No. 94–1990. ANR PIPELINE CO. ET AL. *v.* OKLAHOMA BOARD OF EQUALIZATION ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 891 P. 2d 1219.

No. 94–1991. TRIOMPHE INVESTORS *v.* CITY OF NORTHWOOD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 49 F. 3d 198.

No. 94–1992. FERAG AG *v.* QUIPP INC. C. A. Fed. Cir. Certiorari denied. Reported below: 45 F. 3d 1562.

No. 94–1993. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 47 F. 3d 1091.

No. 94–1994. HUEBNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 376.

No. 94–1996. ANDERSON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 101 Md. App. 713.

No. 94–1998. CAPITAL WHOLESALE ELECTRIC, INC. *v.* MCCARTHY CONSTRUCTION CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 13.

No. 94–1999. FONTANILLE *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied.

No. 94–2000. WOOD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 530.

No. 94–2001. WOODPOINTE INN ASSOCIATES LIMITED PARTNERSHIP ET AL. *v.* CITY OF HARPER WOODS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 48 F. 3d 1220.

No. 94–2002. MORRIS *v.* OREGON DEPARTMENT OF REVENUE. Sup. Ct. Ore. Certiorari denied. Reported below: 320 Ore. 579, 889 P. 2d 1294.

No. 94–2004. CCC INFORMATION SERVICES INC. *v.* MACLEAN HUNTER MARKET REPORTS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 44 F. 3d 61.

No. 94–2005. UNITED STATES *v.* XEROX CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 41 F. 3d 647.

No. 94–2006. HOPEWELL COGENERATION LIMITED PARTNERSHIP ET AL. *v.* VIRGINIA CORPORATION COMMISSION. Sup. Ct. Va. Certiorari denied. Reported below: 249 Va. 107, 453 S. E. 2d 277.

No. 94–2007. DREW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 823.

No. 94–2008. GRUNEWALD *v.* KATINSLY. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1037.

No. 94–2009. GURLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 43 F. 3d 1188.

No. 94–2010. BROWN *v.* MAINTENANCE & INDUSTRIAL SERVICES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1167.

No. 94–2011. RAY QUALMANN MARINE CONSTRUCTION, INC. *v.* SAN, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SAN, DECEASED. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 652 So. 2d 831.

No. 94–2012. JACOBS *v.* GRIEVANCE COMMITTEE FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 44 F. 3d 84.

No. 94–2013. HAMMOUD, AKA GIVAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 310.

No. 94–2014. JONES ET AL. *v.* RESOLUTION TRUST CORPORATION ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 587.

No. 94–2015. STARK ET AL. *v.* REINKE, DBA LAKESIDE PROPERTIES. C. A. 7th Cir. Certiorari denied. Reported below: 45 F. 3d 166.

No. 94–2017. SALT LAKE COUNTY ET AL. *v.* SHEETS. C. A. 10th Cir. Certiorari denied. Reported below: 45 F. 3d 1383.

No. 94–2018. GREGORY *v.* THOMAS L. JACOBS & ASSOCIATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 531.

No. 94–2019. ORYX ENERGY CO., FKA SUN GAS CO., INC. *v.* BOURQUE ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 643 So. 2d 1337.

No. 94–2020. ISHMAEL *v.* UNITED STATES; and
No. 94–9641. ISHMAEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 850.

No. 94–2021. GERACI *v.* ECKANKAR. Ct. App. Minn. Certiorari denied. Reported below: 526 N. W. 2d 391.

No. 94–2023. DALBERTO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 436 Pa. Super. 391, 648 A. 2d 16.

No. 94–2024. EDUCATIONAL DEVELOPMENT NETWORK CORP. ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 47 F. 3d 1162.

No. 94–2025. ENGSTROM ET AL. *v.* FIRST NATIONAL BANK OF EAGLE LAKE. C. A. 5th Cir. Certiorari denied. Reported below: 47 F. 3d 1459.

No. 94–2026. LOCAL 30, UNITED SLATE, TILE & COMPOSITION ROOFERS, DAMP & WATERPROOF WORKERS ASSN., AFL–CIO *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 3d Cir. Certiorari denied.

No. 94–2028. CHEMALALI *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 655 A. 2d 1226.

No. 94–2029. FIELDS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 6th Cir. Certiorari denied. Reported below: 45 F. 3d 430.

No. 94–2030. HARKINS ET AL. *v.* SCATTERED CORP. C. A. 7th Cir. Certiorari denied. Reported below: 47 F. 3d 857.

No. 94–2031. VALERIO *v.* LEND LEASE TRUCKS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 47 F. 3d 1162.

No. 94–2033. COLLINS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 428.

No. 94–2034. EMPRESA NACIONAL SIDERURGICA, S. A. *v.* YOUNG ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 645 So. 2d 1266.

No. 94–2035. GREGORI ET AL. *v.* SCHWARTZ. C. A. 6th Cir. Certiorari denied. Reported below: 45 F. 3d 1017.

No. 94–2036. HAWAIIAN HOMES COMMISSION ET AL. *v.* AGED HAWAIIANS. Sup. Ct. Haw. Certiorari denied. Reported below: 78 Haw. 192, 891 P. 2d 279.

No. 94–2038. FLEMING *v.* GREATER ST. LOUIS AREA MAJOR CASE SQUAD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 1223.

No. 94–2039. NISSEI ASB CO. *v.* FMT CORP., INC. C. A. Fed. Cir. Certiorari denied.

No. 94–2040. BURGMEIER ET AL. *v.* AGRIBANK, FCB, FKA FEDERAL LAND BANK OF ST. PAUL. Ct. App. Minn. Certiorari denied.

No. 94–2041. SANITARY AND IMPROVEMENT DISTRICT NO. 210 OF DOUGLAS COUNTY, NEBRASKA *v.* CITY OF OMAHA ET AL. Ct. App. Neb. Certiorari denied. Reported below: 3 Neb. App. lxxi.

No. 94–2042. BLAKENEY *v.* BAKER HUGHES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 1032.

No. 94–2043. CAMERON ET AL. *v.* GENERAL MOTORS CORP. C. A. 4th Cir. Certiorari denied.

No. 94–2044. INDUSTRIAL EXCESS LANDFILL INC. ET AL. *v.* HARTFORD ACCIDENT & INDEMNITY CO. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1168.

No. 94–2045. PUMMELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 50 F. 3d 11.

No. 94–2046. SCHROCK *v.* MCANINCH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 50 F. 3d 10.

No. 94–2047. ROSEBUD SIOUX TRIBE *v.* VAL-U CONSTRUCTION COMPANY OF SOUTH DAKOTA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 50 F. 3d 560.

No. 94–2048. REED *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 449.

No. 94–2049. STOLZ *v.* KSFM 102 FM ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 30 Cal. App. 4th 195, 35 Cal. Rptr. 2d 740.

No. 94–2051. JUMONVILLE *v.* RUBIN, SECRETARY OF TREASURY. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 1033.

No. 94–2052. CRISAN *v.* A. G. EDWARDS & SONS, INC., ET AL.; and DIDONATO *v.* A. G. EDWARDS & SONS, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–2055. LAWRENCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 54 F. 3d 777.

No. 94–2056. KEARNS *v.* TOYOTA MOTOR CO., LTD., ET AL.; KEARNS *v.* WOODS MOTORS, INC., ET AL.; KEARNS *v.* FRED LAVERY PORSCHE ET AL.; KEARNS *v.* FERRARI S. P. A. ET AL.; and KEARNS *v.* UNITED TECHNOLOGIES CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 39 F. 3d 1194 (first judgment); 53 F. 3d 345 (second, third, fourth, and fifth judgments).

No. 94–2057. OWEN ET UX. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–2058. HIGHLAND FALLS-FORT MONTGOMERY CENTRAL SCHOOL DISTRICT ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 48 F. 3d 1166.

No. 94–2059. LEHTO *v.* ALLSTATE INSURANCE CO. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 31 Cal. App. 4th 60, 36 Cal. Rptr. 2d 814.

No. 94–2061. JENKINS *v.* AMCHEM PRODUCTS, INC., ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 256 Kan. 602, 886 P. 2d 869.

No. 94–2062. CITY OF NATIONAL CITY ET AL. *v.* RATTRAY. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 793.

No. 94–2063. PRIMEDICAL, INC., ET AL. *v.* ALLIED INVESTMENT CORP. C. A. D. C. Cir. Certiorari denied. Reported below: 50 F. 3d 1096.

No. 94–2065. GOETZ ET AL. *v.* CROSSON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 41 F. 3d 800.

No. 94–2066. EL-HAWATKY ET AL. *v.* KAISER FOUNDATION HOSPITALS ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94–2067. TNS, INC. *v.* OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION, AFL–CIO. C. A. D. C. Cir. Certiorari denied. Reported below: 46 F. 3d 82.

No. 94–2070. LANGDALE *v.* HUNTERDON COUNTY ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 94–2072. NEELY ET AL., ADMINISTRATORS OF THE ESTATE OF NEELY, DECEASED *v.* DADE COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1037.

No. 94–2073. EGLIN *v.* UNITED GAS PIPE LINE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 530.

No. 94–2074. KONIAG, INC. *v.* STRATMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 1402.

No. 94–2075. L. G. *v.* EL PASO COUNTY DEPARTMENT OF SOCIAL SERVICES. Sup. Ct. Colo. Certiorari denied. Reported below: 890 P. 2d 647.

No. 94–2076. HARRISON ET AL. *v.* HOWARD UNIVERSITY. C. A. D. C. Cir. Certiorari denied. Reported below: 48 F. 3d 562.

No. 94–2078. MONTOYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1147.

No. 94–2079. SHIFFLETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 50 F. 3d 9.

No. 94–2080. CUMMINGS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 529.

No. 94–2082. EL SHAHAWY ET AL. *v.* HARRISON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1049.

No. 94–2083. STERN *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 2d Cir. Certiorari denied.

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No. 94–2084. ADAMS, MASSACHUSETTS COMMISSIONER OF REVENUE *v.* PERINI CORP. ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 419 Mass. 763, 647 N. E. 2d 52.

No. 94–2085. STUCKEY ET UX. *v.* CISNEROS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 1122.

No. 94–2086. SKRMETTA MACHINERY CORP. *v.* LAITRAM MACHINERY, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 52 F. 3d 343.

No. 94–2087. BROWN DALTAS & ASSOCIATES, INC., ET AL. *v.* NORTHBROOK EXCESS SURPLUS INSURANCE CO. C. A. 1st Cir. Certiorari denied. Reported below: 48 F. 3d 30.

No. 94–2088. DIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 94–2089. DOWNEY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 652 So. 2d 824.

No. 94–2091. BARTON ET AL. *v.* AMERICAN RED CROSS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 678 and 679.

No. 94–2093. PUBLIC UTILITY DISTRICT NO. 1, SNOHOMISH COUNTY, WASHINGTON *v.* CLASS PLAINTIFFS IN MDL–551 ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 41 F. 3d 1513.

No. 94–2095. SYLLA-SAWDON *v.* UNIROYAL GOODRICH TIRE CO. C. A. 8th Cir. Certiorari denied. Reported below: 47 F. 3d 277.

No. 94–2096. SCHREIBER *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 50 F. 3d 11.

No. 94–2097. SHANNON ET AL. *v.* CITY OF SANTA ANA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1145.

No. 94–2098. ABOFREKA *v.* SOUTH CAROLINA BOARD OF MEDICAL EXAMINERS. Ct. App. S. C. Certiorari denied.

No. 94–2099. CITY OF HOUSTON ET AL. *v.* HARRIS COUNTY OUTDOOR ADVERTISING ASSN. ET AL. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 879 S. W. 2d 322.

No. 94–2101. SALINAS *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 888 S. W. 2d 93.

No. 94–2105. ADAMSON ET AL. *v.* ARMCO, INC. C. A. 8th Cir. Certiorari denied. Reported below: 44 F. 3d 650.

No. 94–2106. MAYNARD *v.* NORFOLK & WESTERN RAILWAY CO. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 267.

No. 94–2108. STURGIS *v.* LOGAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 282.

No. 94–2109. MACLEOD *v.* BROCCOLETTI ET AL. Sup. Ct. Va. Certiorari denied.

No. 94–2110. HOMMERDING *v.* TRAVELERS INSURANCE CO. ET AL. Ct. App. Minn. Certiorari denied.

No. 94–2112. DEL ORO HILLS *v.* CITY OF OCEANSIDE. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 31 Cal. App. 4th 1060, 37 Cal. Rptr. 2d 677.

No. 94–2113. TRANSPORTATION INSURANCE BROKERS, INC. *v.* D. W. FERGUSON & ASSOCIATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1142.

No. 94–2114. SEGAL *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied.

No. 94–2116. LANDSCAPE PROPERTIES, INC. *v.* VOGEL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 1416.

No. 94–2118. CONKLIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 56 F. 3d 77.

No. 94–2119. FOREHAND *v.* ARKANSAS. Ct. App. Ark. Certiorari denied. Reported below: 48 Ark. App. xv.

No. 94–2120. CANNON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 41 F. 3d 1462.

No. 94–2121. CUMMINGS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 203.

No. 94–2122. JARREAU *v.* PORT ARTHUR TOWING CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 42 F. 3d 312.

No. 94–2123. JANUS INDUSTRIES, DBA ACAPULCO SMOKE SHOP, ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 1548.

No. 94–2124. MILTON *v.* HELLER. C. A. 8th Cir. Certiorari denied. Reported below: 47 F. 3d 944.

No. 94–2126. BAPTIST MEMORIAL HOSPITAL *v.* PAN AMERICAN LIFE INSURANCE CO. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 45 F. 3d 992.

No. 94–2127. GEORGE ET AL. *v.* CASALE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 314.

No. 94–2128. MIAN *v.* DONALDSON, LUFKIN & JENRETTE SECURITIES CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 810.

No. 94–2131. SMITH ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1070.

No. 94–2132. KELLER *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 851.

No. 94–2133. CRAWFORD *v.* UNITED STATES DEPARTMENT OF AGRICULTURE. C. A. D. C. Cir. Certiorari denied. Reported below: 50 F. 3d 46.

No. 94–2136. LEIK ET AL. *v.* SANTIAGO. Ct. App. Wis. Certiorari denied.

No. 94–2137. GENERAL MOTORS CORP. *v.* FRENCH ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 55 F. 3d 768.

No. 94–2138. WILEY ET AL. *v.* MAYOR AND CITY COUNCIL OF BALTIMORE. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 773.

No. 94–8473. HOLLOWAY *v.* COLORADO DEPARTMENT OF CORRECTIONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 37 F. 3d 1509.

No. 94–8485. GRAJEDA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–8573. ESLICK *v.* TRAUGHBER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1168.

No. 94–8580. GUNTER *v.* ROGERS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 39 F. 3d 1182.

No. 94–8610. EISENSTEIN *v.* EISENSTEIN. Super. Ct. N. J., App. Div. Certiorari denied.

No. 94–8664. RIJO-MONTAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 48 F. 3d 1214.

No. 94–8672. GORDON *v.* UNITED STATES MARSHALS SERVICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1092.

No. 94–8674. AHMAD *v.* ORTIZ ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 44 F. 3d 1004.

No. 94–8685. BROWN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 339 N. C. 426, 451 S. E. 2d 181.

No. 94–8744. JILL V. *v.* ORANGE COUNTY SOCIAL SERVICES AGENCY. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 31 Cal. App. 4th 221, 36 Cal. Rptr. 2d 848.

No. 94–8757. FOREN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 94–8773. HAMRICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 43 F. 3d 877.

No. 94–8794. PETERSEN *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–8807. OKOLO *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1143.

No. 94–8813. POWELL *v.* DUCHARME, SUPERINTENDENT, WASHINGTON STATE REFORMATORY. C. A. 9th Cir. Certiorari denied. Reported below: 998 F. 2d 710.

No. 94–8870. DOVER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 46 F. 3d 1152.

No. 94–8879. VANDELFT *v.* MOSES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 31 F. 3d 794.

No. 94–8884. CRITTENDEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 1225.

No. 94–8915. BORKINS *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 41 F. 3d 1506.

No. 94–8923. ZAK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 46 F. 3d 1134.

No. 94–8936. MCDANIEL *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 38 F. 3d 385.

No. 94–8960. CHIGBO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 38 F. 3d 543.

No. 94–8963. BOLDEN *v.* PRC, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 43 F. 3d 545.

No. 94–8967. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 46 F. 3d 57.

No. 94–8989. LYLE *v.* DEDEAUX ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 39 F. 3d 320.

No. 94–9010. HERNANDEZ-AVALOS ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 50 F. 3d 842.

No. 94–9038. MACDONALD *v.* UNITED STATES;
No. 94–9372. BENALLY *v.* UNITED STATES;
No. 94–9380. LEE *v.* UNITED STATES;
No. 94–9428. MCKENSLEY *v.* UNITED STATES; and
No. 94–9485. KINLICHEENIE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 486.

No. 94–9055. SELLERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 42 F. 3d 116.

No. 94–9066. GOAD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 44 F. 3d 580.

No. 94–9073. COLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 41 F. 3d 303.

No. 94–9076. COTAL-CRESPO ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 47 F. 3d 1.

No. 94–9092. KEATING *v.* OFFICE OF THRIFT SUPERVISION. C. A. 9th Cir. Certiorari denied. Reported below: 45 F. 3d 322.

No. 94–9109. ENIS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 163 Ill. 2d 367, 645 N. E. 2d 856.

No. 94–9114. DUMAGUIN *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. D. C. Cir. Certiorari denied. Reported below: 28 F. 3d 1218.

No. 94–9152. DAVIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 648 So. 2d 107.

No. 94–9157. STRICKLAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 94–9174. MITCHELL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 884 P. 2d 1186.

No. 94–9178. PERDUE *v.* TROUTMAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 19 F. 3d 19.

No. 94–9182. MCGREGOR *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 885 P. 2d 1366.

No. 94–9197. FAZZINI *v.* HENMAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 46 F. 3d 1150.

No. 94–9199. IDROGO *v.* MIRELES, JUDGE, DISTRICT COURT OF TEXAS, BEXAR COUNTY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 47 F. 3d 425.

No. 94–9201. BREAZEALE *v.* THOMPSON, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1138.

No. 94–9213. NEWTON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–9214. WEATHERFORD *v.* LECUREUX, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 327.

No. 94–9215. LEEDY *v.* AGRIBANK, FCB. C. A. 6th Cir. Certiorari denied. Reported below: 41 F. 3d 1507.

No. 94–9219. GOLDWITZ *v.* CHAUVIN INTERNATIONAL LTD. C. A. 2d Cir. Certiorari denied. Reported below: 40 F. 3d 1237.

No. 94–9220. RATNAWEERA ET UX. *v.* RESOLUTION TRUST CORPORATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1188.

No. 94–9224. KIM LY LIM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–9227. LAPSLEY *v.* NORTHERN INDIANA PUBLIC SERVICE CO. C. A. 7th Cir. Certiorari denied.

No. 94–9228. SPEARMAN *v.* EPPS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 728.

No. 94–9231. GARDNER *v.* HOLDEN, WARDEN, ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 888 P. 2d 608.

No. 94–9239. STRICKLAND *v.* PONTIAC CORRECTIONAL CENTER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 45 F. 3d 432.

No. 94–9240. WOODRUFF *v.* CHUN, REGIONAL ADMINISTRATOR, CALIFORNIA ADULT PAROLE SERVICES, REGION II, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1149.

No. 94–9242. WOODCOCK *v.* CHEMICAL BANK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 45 F. 3d 363.

No. 94–9243. BENNETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 44 F. 3d 1364.

No. 94–9245. AYALA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–9246. BOYD *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 36 Conn. App. 516, 651 A. 2d 1313.

No. 94–9250. ROBERSON *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 1126.

No. 94–9255. BURDEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 94-9257. KIMBERLIN *v.* DELONG, PERSONAL REPRESENTATIVE FOR DELONG, DECEASED, AND IN HER OWN CAPACITY. Sup. Ct. Ind. Certiorari denied. Reported below: 637 N. E. 2d 121.

No. 94-9258. TYLER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 71 Ohio St. 3d 398, 643 N. E. 2d 1150.

No. 94-9263. SMITH *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 893 S. W. 2d 908.

No. 94-9264. HECTOR M. *v.* JESSICA G. Ct. App. Md. Certiorari denied. Reported below: 337 Md. 388, 653 A. 2d 922.

No. 94-9269. LONDON *v.* MAC CORPORATION OF AMERICA. C. A. 5th Cir. Certiorari denied. Reported below: 44 F. 3d 316.

No. 94-9270. LOGAN *v.* BLACK. C. A. 5th Cir. Certiorari denied. Reported below: 47 F. 3d 426.

No. 94-9272. JUELS *v.* FEDERAL REPUBLIC OF GERMANY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 32 F. 3d 566.

No. 94-9275. LAFOUNTAIN *v.* SIMASKO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 38 F. 3d 1216.

No. 94-9276. NICHOLAS *v.* BURKITT. Ct. App. Mich. Certiorari denied.

No. 94-9278. PLONEDA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94-9279. BOND *v.* O'DEA, WARDEN. Ct. App. Ky. Certiorari denied.

No. 94-9281. FRANKLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1140.

No. 94-9287. HAMMOND *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 264 Ga. 879, 452 S. E. 2d 745.

No. 94-9288. HOOPER *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Certiorari denied.

No. 94-9289. WEEKS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 248 Va. 460, 450 S. E. 2d 379.

No. 94–9290. WAGNER *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 270 Mont. 26, 889 P. 2d 1189.

No. 94–9291. WISE *v.* HANNIGAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 47 F. 3d 1178.

No. 94–9292. THOMAS *v.* HOLMES, REGIONAL MANAGER, DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 1233.

No. 94–9293. BREWER *v.* OHIO. Ct. App. Ohio, Greene County. Certiorari denied.

No. 94–9296. HENRY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 649 So. 2d 1361.

No. 94–9298. THOMAS *v.* JACKSON, JUDGE, COURT OF APPEALS OF UTAH, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 1233.

No. 94–9299. KIMBLE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–9300. WATERS *v.* NEIDENBACH ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1285.

No. 94–9301. CARTER *v.* FENNER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1043.

No. 94–9304. JONES *v.* SIKES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 677.

No. 94–9305. JEFFRIES *v.* METRO-MARK, INC. C. A. 8th Cir. Certiorari denied. Reported below: 45 F. 3d 258.

No. 94–9306. MALONEY *v.* GLADSTONE ET AL. Sup. Ct. N. H. Certiorari denied.

No. 94–9307. BASTIDA *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 47 F. 3d 423.

No. 94–9310. DAVIS *v.* GRAMLEY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 94–9313. MORRIS, AKA PRUITT *v.* RIVERS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94-9314. HUTCHINSON *v.* CHESNEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FRACKVILLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94-9317. SIMKO *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 71 Ohio St. 3d 483, 644 N. E. 2d 345.

No. 94-9318. SCOTT *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 94-9324. GALLOWAY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 94-9327. DE CACERES *v.* CLARKSON ET AL. C. A. 3d Cir. Certiorari denied.

No. 94-9330. PRUNTY *v.* FERGUSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 326.

No. 94-9331. GARNER *v.* HAWAII DEPARTMENT OF EDUCATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 45 F. 3d 436.

No. 94-9333. FRITZ *v.* BOSSE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 94-9334. HALL *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 651 So. 2d 682.

No. 94-9335. GIVENS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 649 So. 2d 418.

No. 94-9337. FIELDS *v.* CITY OF BROCKTON. C. A. 1st Cir. Certiorari denied. Reported below: 45 F. 3d 423.

No. 94-9339. HEATHERLY *v.* WITKOWSKI, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 47 F. 3d 1165.

No. 94-9340. GRIBBLE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94-9341. GLOVER *v.* LEONARDO, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 94–9344. EDMON *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 40 F. 3d 1018.

No. 94–9347. LEE *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 529.

No. 94–9349. WARD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 94–9350. THOMPSON *v.* ESTATE OF THOMPSON. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 94–9351. THOMPSON *v.* ESTATE OF THOMPSON. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 94–9352. LYDON *v.* MALME ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 36 F. 3d 1089.

No. 94–9353. SPINNER ET UX. *v.* COUNTY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–9356. WHITTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 649 So. 2d 861.

No. 94–9357. DINKINS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 894 So. 2d 330.

No. 94–9358. HUBBARD *v.* MUNICIPALITY OF METROPOLITAN SEATTLE. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 1400.

No. 94–9359. GASKINS *v.* RUNYON, POSTMASTER GENERAL. C. A. D. C. Cir. Certiorari denied.

No. 94–9360. ROUSE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 339 N. C. 59, 451 S. E. 2d 543.

No. 94–9361. BURNS *v.* BURNS. C. A. 7th Cir. Certiorari denied. Reported below: 46 F. 3d 1133.

No. 94–9364. STIFF *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 206 App. Div. 2d 235, 620 N. Y. S. 2d 87.

No. 94-9366. OKORONKWO *v.* UNITED STATES; and
No. 94-9465. EKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 F. 3d 426.

No. 94-9367. STURGIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 784.

No. 94-9370. RODENBAUGH *v.* CURTO ET AL. C. A. 3d Cir. Certiorari denied.

No. 94-9373. BATTLE *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 47 F. 3d 1164.

No. 94-9374. CROWELL *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1215.

No. 94-9375. PHILLIPS *v.* LAW OFFICES OF KELLY, LEWIS & HARDT ET AL. Sup. Ct. Va. Certiorari denied.

No. 94-9376. MENDIZAVAL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94-9378. JOHNS *v.* TOWN OF LOS GATOS ET AL. C. A. 9th Cir. Certiorari denied.

No. 94-9379. KISH *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 71 Ohio St. 3d 617, 646 N. E. 2d 459.

No. 94-9381. CLARK *v.* JONES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94-9383. WILLIAMS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 339 N. C. 1, 452 S. E. 2d 245.

No. 94-9386. LEWIS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 94-9390. WILSON *v.* COOPER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 276.

No. 94-9391. SANCHEZ *v.* SHILLINGER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 1232.

No. 94-9393. MORRIS *v.* YLST, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 334.

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No. 94-9394. CASH *v.* LOS ANGELES COUNTY DISTRICT ATTORNEY. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 13.

No. 94-9396. LEWIS *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 48 F. 3d 1238.

No. 94-9397. JONES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94-9399. ANDERSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 266 Ill. App. 3d 947, 641 N. E. 2d 591.

No. 94-9404. HAUGHTON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 434 Pa. Super. 665, 640 A. 2d 472.

No. 94-9407. LYON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 47 F. 3d 427.

No. 94-9408. KELUBAI *v.* WRIGHT, SUPERINTENDENT, MAXIMUM CONTROL COMPLEX. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 275.

No. 94-9409. WILLIAMS *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 47 F. 3d 1178.

No. 94-9410. SPRUILL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 338 N. C. 612, 452 S. E. 2d 279.

No. 94-9413. BROCKLEBANK *v.* ENGLISH ET AL. Sup. Ct. Ga. Certiorari denied.

No. 94-9416. HELTON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 641 So. 2d 146.

No. 94-9417. GLANT *v.* GLANT. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 651 So. 2d 1198.

No. 94-9421. ERICKSON *v.* REYNOLDS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 47 F. 3d 429.

No. 94-9422. HINES, AKA SHEHEED *v.* BROWN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1228.

No. 94-9423. FOTI *v.* CAMERON ET AL. App. Ct. Mass. Certiorari denied. Reported below: 37 Mass. App. 1108, 639 N. E. 2d 1119.

No. 94-9424. GREEN *v.* ZIEGLER. Sup. Ct. Ill. Certiorari denied.

No. 94-9425. TYLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 94-9427. NWANZE *v.* JONES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 94-9429. PERKOVIC ET AL. *v.* WEST PENN ABSTRACT CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 43 F. 3d 1462.

No. 94-9434. IRWIN *v.* HAWK, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 40 F. 3d 347.

No. 94-9435. BANKS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 540 Pa. 143, 656 A. 2d 467.

No. 94-9436. BRADY *v.* TANSY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 285.

No. 94-9437. WHALEN *v.* ALVEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1172.

No. 94-9438. TESTA *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 52 F. 3d 343.

No. 94-9439. TESTA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 94-9440. JONES *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 539 Pa. 222, 651 A. 2d 1101.

No. 94-9441. GUNN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 728.

No. 94-9445. STANTON *v.* GONNERING ET AL. Ct. App. Wis. Certiorari denied.

No. 94–9447. PLESCIA *v.* UNITED STATES;
No. 95–5053. DEMMA *v.* UNITED STATES; and
No. 95–5264. GROSSI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1452.

No. 94–9448. THOMAS *v.* WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1000.

No. 94–9450. TONEY *v.* WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 993.

No. 94–9452. REICHE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1172.

No. 94–9453. RUPERT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 F. 3d 190.

No. 94–9455. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 732.

No. 94–9456. RIVERA *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 39 F. 3d 1188.

No. 94–9457. MARRONE, AKA MOOSE, ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 48 F. 3d 735.

No. 94–9459. CHAMBERS *v.* UNITED STATES; and
No. 95–5344. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 16.

No. 94–9462. CODARIO *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 314.

No. 94–9464. TERRELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1285.

No. 94–9471. DRAGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 732.

No. 94–9474. BLYTHE *v.* UNITED STATES;
No. 94–9489. MINOR *v.* UNITED STATES; and

No. 94-9503. OLIVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 F. 3d 70.

No. 94-9475. BACON *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 163 Vt. 279, 658 A. 2d 54.

No. 94-9476. AGUILERA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 327.

No. 94-9477. BORJESSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1146.

No. 94-9478. RAMPERSAD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 47 F. 3d 430.

No. 94-9480. HARRIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94-9481. MEREDITH *v.* FARLEY, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1222.

No. 94-9482. LLOYD *v.* NEW YORK (two judgments). App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 210 App. Div. 2d 1013, 622 N. Y. S. 2d 176.

No. 94-9486. KANESHIRO *v.* MARSHALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94-9487. MONROE *v.* MCLAURIN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 534.

No. 94-9488. MIKKILINENI *v.* AMWEST SURETY INSURANCE CO. ET AL.; and MIKKILINENI ET AL. *v.* INDIANA COUNTY TRANSIT AUTHORITY ET AL. C. A. 3d Cir. Certiorari denied.

No. 94-9490. MANCE *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 40 F. 3d 1246.

No. 94-9492. MCCLOUD *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 257 Kan. 1, 891 P. 2d 324.

No. 94-9493. C. R. S. *v.* T. A. M. ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 892 P. 2d 246.

No. 94–9494. BELL *v.* BILANDIC ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 47 F. 3d 1173.

No. 94–9495. CULLY *v.* SWEENEY ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 71 Ohio St. 3d 1454, 644 N. E. 2d 1027.

No. 94–9496. GHAZALI *v.* MORAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 52.

No. 94–9497. FAISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 731.

No. 94–9498. HEMPHILL *v.* HOUSING AUTHORITY OF THE CITY OF CHARLESTON ET AL. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 94–9499. HOLSEY *v.* SMITH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 1124.

No. 94–9500. HOYE *v.* RICKARDS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 43 F. 3d 1466.

No. 94–9501. GOLDMAN *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–9502. HARVEY *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–9504. SHEEHY ET UX. *v.* PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE, POTTER COUNTY ASSISTANCE OFFICE. Ct. Common Pleas of Potter County, Pa. Certiorari denied.

No. 94–9505. ATTWOOD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 659 So. 2d 270.

No. 94–9506. MCCARTY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 326.

No. 94–9507. AGUIRRE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 31 Cal. App. 4th 391, 37 Cal. Rptr. 2d 48.

No. 94–9509. KELLOGG ET AL. *v.* SHOEMAKER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 46 F. 3d 503.

No. 94–9510. MADISON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 94–9511. WEBB *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 49 F. 3d 636.

No. 94–9512. ROSS *v.* DONTZIN, JUDGE, SUPREME COURT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 94–9513. RALLI-ROJAS *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 45 F. 3d 436.

No. 94–9514. TINSLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 94–9515. WOOLDRIDGE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 343.

No. 94–9516. PIERCE *v.* KEARNEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 267.

No. 94–9517. MERRICKS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 318.

No. 94–9518. LUCIEN *v.* IRVIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1221.

No. 94–9519. SPREMO *v.* GRACI ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 41 F. 3d 1502.

No. 94–9520. ROBERTS *v.* ANDOLINA ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 50 F. 3d 4.

No. 94–9521. FLORES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 467.

No. 94–9522. HAVERSTOCK ET AL. *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 14.

No. 94–9523. CRUZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94-9524. MADUNO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 40 F. 3d 1212.

No. 94-9525. FRANKLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1141.

No. 94-9527. EMERY *v.* MERKEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1227.

No. 94-9528. ALLEYN *v.* MORGAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94-9529. PERTSONI *v.* VASQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 47 F. 3d 1175.

No. 94-9530. STENZEL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 49 F. 3d 658.

No. 94-9531. THOMAS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 888 P. 2d 522.

No. 94-9532. SUMLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 361.

No. 94-9533. SEE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 94-9534. PATCH *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1217.

No. 94-9535. IBRAHIM, AKA CASEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 94-9536. BRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 F. 3d 1220.

No. 94-9537. COFFIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 731.

No. 94-9538. WASHINGTON *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 94-9539. KELLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1217.

No. 94-9540. MASON *v.* GODINEZ, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 47 F. 3d 852.

No. 94-9541. PINTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 384.

No. 94-9542. MICOU *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 F. 3d 1220.

No. 94-9543. FRANCISCO MUNOZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 94-9544. CURTIS *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 312.

No. 94-9545. BARNES *v.* BOROUGH OF POTTSTOWN, PENNSYLVANIA, ET AL. (two judgments). C. A. 3d Cir. Certiorari denied.

No. 94-9546. JONES *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 94-9547. JAMES *v.* RUNYON, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 47 F. 3d 1158.

No. 94-9548. KELLEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 440 Pa. Super. 633, 654 A. 2d 600.

No. 94-9549. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1038.

No. 94-9550. MCGINNIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94-9551. TAYLOR *v.* WALTER ET AL. C. A. 5th Cir. Certiorari denied.

No. 94-9552. HOLT *v.* CAMPBELL, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1169.

No. 94-9553. ETEMAD *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 43 F. 3d 1479.

No. 94-9554. GREEN *v.* CARVER STATE BANK. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 733.

No. 94-9555. WILSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 249 Va. 95, 452 S. E. 2d 669.

No. 94–9556. WHITMORE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 1225.

No. 94–9557. YOUNG *v.* WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 19.

No. 94–9558. CULKIN *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 45 F. 3d 1229.

No. 94–9559. RIEMER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1222.

No. 94–9561. O'CONNELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 1128.

No. 94–9562. BRYANT *v.* PERRY, SECRETARY OF DEFENSE. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1215.

No. 94–9563. GREENFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 47 F. 3d 669.

No. 94–9564. HIRANO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1217.

No. 94–9565. GEDDIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 F. 3d 70.

No. 94–9566. HASSAN *v.* WRIGHT, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID. C. A. 7th Cir. Certiorari denied. Reported below: 45 F. 3d 1063.

No. 94–9567. EUBANKS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 94–9568. SHIEH *v.* UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 94–9569. POUNDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1038.

No. 94–9570. BOMENGO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 535.

No. 94–9571. CARTON *v.* MISSOURI PACIFIC RAILROAD CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 1135.

No. 94–9572. O'NEAL *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 44 F. 3d 655.

No. 94–9573. LEWIS *v.* MCLEES. C. A. 8th Cir. Certiorari denied.

No. 94–9574. GOMEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 94–9575. POLLACK *v.* DEPARTMENT OF JUSTICE. C. A. 4th Cir. Certiorari denied. Reported below: 49 F. 3d 115.

No. 94–9576. HILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 42 F. 3d 914.

No. 94–9577. LOSTUTTER *v.* WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 50 F. 3d 392.

No. 94–9578. MCCLURE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 17.

No. 94–9579. MELING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 F. 3d 1546.

No. 94–9580. MAHAN *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 94–9581. MCGORE *v.* STINE, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–9582. GENTRY *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 125 Wash. 2d 570, 888 P. 2d 1105.

No. 94–9583. COOPER *v.* WITKOWSKI, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 50 F. 3d 5.

No. 94–9584. WORELDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 47 F. 3d 429.

No. 94–9585. SMITH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 898 S. W. 2d 838.

No. 94–9586. TERRELL *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–9587. TRICE *v.* WILLIAMS ET AL. C. A. 6th Cir. Certiorari denied.

No. 94–9588. WHITE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–9589. MALLORY ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1217.

No. 94–9590. MCADAMS *v.* AUTOMOTIVE RENTALS, INC. Sup. Ct. Ark. Certiorari denied. Reported below: 319 Ark. 254, 891 S. W. 2d 52.

No. 94–9591. BROWN *v.* MCCAUGHTRY, WARDEN. Ct. App. Wis. Certiorari denied.

No. 94–9592. WILLIAMS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–9593. WALLACE *v.* NEWSOME, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1039.

No. 94–9594. LOWERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 535.

No. 94–9595. JONES *v.* ITT FINANCIAL SERVICES, DBA AETNA FINANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1045.

No. 94–9596. MEDRANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 74.

No. 94–9597. O'ROURKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1051.

No. 94–9598. ROBERTSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 45 F. 3d 1423.

No. 94–9599. MARTEL *v.* NEW HAMPSHIRE; and MARTEL *v.* CITY OF CONCORD. Dist. Ct. N. H., Concord Dist. Certiorari denied.

No. 94–9600. SCOFIELD *v.* ZENON, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 16.

No. 94-9601. SPAIN *v.* CITY OF VIRGINIA BEACH, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 268.

No. 94-9602. STOKES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 1233.

No. 94-9603. STEWART *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1218.

No. 94-9604. ORTIZ-VILLEGAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 F. 3d 1435.

No. 94-9605. AGBONGIAGUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 F. 3d 70.

No. 94-9606. BROWN *v.* VARNER. C. A. 5th Cir. Certiorari denied.

No. 94-9607. CONLEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 37 F. 3d 1498.

No. 94-9608. REED *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 94-9609. ROCHELL ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 94-9610. SANTANA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 1033.

No. 94-9611. PIERCE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 94-9612. THOMAS *v.* CLARK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1222.

No. 94-9613. WASHINGTON *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 270.

No. 94-9615. FREEMAN *v.* DUBOIS, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied.

No. 94–9616. DAVIS *v.* NORTH CAROLINA; and
No. 95–5448. HOOD *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 340 N. C. 1, 455 S. E. 2d 627.

No. 94–9618. GLOVER *v.* SUPERIOR COURT OF CALIFORNIA, SOLANO COUNTY. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–9619. EPISON *v.* UNITED STATES; and
No. 94–9671. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 49 F. 3d 1271.

No. 94–9620. HUTCHISON *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 898 S. W. 2d 161.

No. 94–9621. FORTENBERRY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 659 So. 2d 194.

No. 94–9622. CLAYTON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 892 P. 2d 646.

No. 94–9623. CHASE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94–9624. ARNOLD *v.* BOATMEN'S TRUST CO. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 1135.

No. 94–9625. BERGMANN *v.* MCCAUGHTRY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1221.

No. 94–9626. HUGHES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 1033.

No. 94–9627. DANIEL ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1048.

No. 94–9628. DOMINGO GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1044.

No. 94–9629. ATTWOOD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–9630. HARRIS *v.* MATTHEWS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 535.

No. 94–9631. GOVOSTIS *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 1124.

No. 94-9632. HEWLETT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 439 Pa. Super. 668, 653 A. 2d 1300.

No. 94-9633. FLEMING *v.* UNITED PARCEL SERVICE, INC., ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 273 N. J. Super. 526, 642 A. 2d 1029.

No. 94-9634. MOSELEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1229.

No. 94-9635. JOSEPH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 50 F. 3d 401.

No. 94-9636. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 287.

No. 94-9637. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1066.

No. 94-9638. JIMENEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 276.

No. 94-9639. KEMP *v.* BANE, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 201 App. Div. 2d 956, 610 N. Y. S. 2d 907.

No. 94-9640. MONROE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1070.

No. 94-9642. BATES *v.* SCORZA ET AL. C. A. 7th Cir. Certiorari denied.

No. 94-9644. HOYETT *v.* 40TH JUDICIAL CIRCUIT COURT ET AL. C. A. 11th Cir. Certiorari denied.

No. 94-9645. BARRINO *v.* BEYER, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 313.

No. 94-9646. ADAMS *v.* EDWARDS ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 892 S. W. 2d 651.

No. 94-9647. ADAMS *v.* EDWARDS. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 892 S. W. 2d 655.

No. 94-9649. DOTSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 49 F. 3d 227.

No. 94-9651. HAWKINS *v.* ABRAMAJTYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94-9652. EASLEY *v.* VANCE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 47 F. 3d 426.

No. 94-9654. MCFARLAND *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 46 F. 3d 65.

No. 94-9655. LOPEZ *v.* ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 94-9656. MERRITT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 677.

No. 94-9657. LANDRUM *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 191 Wis. 2d 107, 528 N. W. 2d 36.

No. 94-9658. MILLSAP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1039.

No. 94-9659. THOMPSON, ON BEHALF OF THOMPSON *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 727.

No. 94-9660. TESTA *v.* HOTEL EMPLOYEES & RESTAURANT EMPLOYEES INTERNATIONAL UNION, AFL-CIO, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1171.

No. 94-9661. AMARAL *v.* RHODE ISLAND HOSPITAL TRUST NATIONAL BANK ET AL. Sup. Ct. R. I. Certiorari denied. Reported below: 657 A. 2d 1069.

No. 94-9662. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 731.

No. 94-9663. GOODMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 47 F. 3d 1166.

No. 94-9664. SCOTT *v.* KMART CORP. C. A. 11th Cir. Certiorari denied. Reported below: 39 F. 3d 323.

No. 94–9665. ELLIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 50 F. 3d 419.

No. 94–9666. PRENZLER *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 53 F. 3d 347.

No. 94–9667. RAITPORT *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 94–9668. RICHARDSON *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 94–9669. BIGGINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 679.

No. 94–9670. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 F. 3d 993.

No. 94–9672. DOMANSKI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1222.

No. 94–9673. HUNT *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 163 Vt. 383, 658 A. 2d 919.

No. 94–9674. STEPHENS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 356, 456 S. E. 2d 560.

No. 94–9675. CRITTENDEN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 4th 83, 885 P. 2d 887.

No. 94–9676. SIDEBOTTOM *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 744.

No. 94–9677. POLEWSKY *v.* VERMONT DEPARTMENT OF SOCIAL WELFARE. Sup. Ct. Vt. Certiorari denied. Reported below: 163 Vt. 650, 655 A. 2d 735.

No. 94–9678. BACA *v.* UDALL, ATTORNEY GENERAL OF NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 285.

No. 94–9679. BLOUNT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 654 So. 2d 126.

No. 94-9680. SYLVAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 1127.

No. 94-9681. TURSI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 44 F. 3d 1008.

No. 94-9682. WILSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 538 Pa. 485, 649 A. 2d 435.

No. 94-9683. HENDERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 50 F. 3d 11.

No. 94-9685. STRICKLAND ET VIR *v.* MAINE DEPARTMENT OF HUMAN SERVICES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 48 F. 3d 12.

No. 94-9686. PRUE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94-9687. WILLIAMSON *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 651 So. 2d 84.

No. 94-9689. O'LEARY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 339.

No. 94-9690. STRICKLER *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Va. Certiorari denied. Reported below: 249 Va. 120, 452 S. E. 2d 648.

No. 94-9691. GARCIA-ROSELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 283.

No. 94-9692. COX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1049.

No. 94-9694. ADAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1041.

No. 94-9696. FAIN *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 40 F. 3d 1246.

No. 94-9697. SETTENBERG *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 62.

No. 94-9698. GILBERTSON *v.* DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 651 So. 2d 1193.

No. 94–9699. ROCHON *v.* BLACKBURN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 1033.

No. 94–9700. OWENS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 94–9702. RODRIGUES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 8 Cal. 4th 1060, 885 P. 2d 1.

No. 94–9703. SAUCEDA *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1042.

No. 94–9704. JACKSON *v.* VANNOY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 175.

No. 94–9705. MARINO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 318.

No. 94–9706. MANARITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 F. 3d 1407.

No. 94–9707. JACKSON *v.* DAVIS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 94–9708. KALYON *v.* HANSLMAIER, SUPERINTENDENT, WOODBOURNE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 94–9709. KAILEY *v.* GALLAGHER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 286.

No. 94–9710. R. M. *v.* WYOMING DEPARTMENT OF FAMILY SERVICES ET AL. Sup. Ct. Wyo. Certiorari denied. Reported below: 891 P. 2d 791.

No. 94–9711. KEYLIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 50 F. 3d 3.

No. 94–9712. BRADSHAW *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 317.

No. 94–9713. HOSEA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 47 F. 3d 431.

No. 94–9714. VELEZ *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied.

No. 94-9715. GILBERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 47 F. 3d 1116.

No. 94-9716. FULOP *v.* HAMILTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1141.

No. 94-9717. WHITLOCK *v.* GODINEZ, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 59.

No. 94-9718. WATKINS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94-9719. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1051.

No. 94-9721. JONES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94-9722. GIBSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 876.

No. 94-9723. NWANZE *v.* MORCHOWER, LUXTON & WHALEY. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 267.

No. 94-9724. DUCHI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 1135.

No. 94-9725. JENKINS *v.* KANSAS. Sup. Ct. Kan. Certiorari denied.

No. 94-9726. LUCIEN *v.* BIERMAN. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 275.

No. 94-9727. REDDIC *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 18.

No. 94-9728. SARTIN *v.* DODSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 268.

No. 94-9730. WILSON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 659 So. 2d 152.

No. 94-9731. WATSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 651 So. 2d 1159.

No. 94-9732. MARTINEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94–9733. CARMICHAEL *v.* RIVELAND ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–9737. DINGLE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 94–9738. JORDAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 732.

No. 94–9739. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1217.

No. 94–9740. SCEIFERS *v.* TRIGG, SUPERINTENDENT, INDIANA YOUTH CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 46 F. 3d 701.

No. 94–9741. GRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1050.

No. 94–9742. STEWART *v.* COALTER, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 48 F. 3d 610.

No. 94–9743. BROWN *v.* MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94–9744. MACK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 126.

No. 94–9745. CHAPMAN *v.* BURTON BERGER & ASSOCIATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 46 F. 3d 1133.

No. 94–9746. FELICIANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 45 F. 3d 1070.

No. 94–9747. WAFFER *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–9748. ATTWOOD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 651 So. 2d 686.

No. 94–9750. BEO *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94-9751. DAILEY *v.* HOWARD. Ct. Civ. App. Ala. Certiorari denied. Reported below: 659 So. 2d 629.

No. 94-9752. SKANDIER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 319.

No. 94-9753. HABURN ET AL. *v.* WAKE COUNTY ET AL. Sup. Ct. N. C. Certiorari denied.

No. 94-9754. LUCCIOLA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 436 Pa. Super. 665, 648 A. 2d 1235.

No. 94-9755. SANBORN *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 892 S. W. 2d 542.

No. 94-9756. SIMMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1048.

No. 94-9757. PRATHER *v.* BEYER, ASSISTANT COMMISSIONER, NEW JERSEY DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 94-9758. HERRERA-ISAIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1043.

No. 94-9759. MEANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 17.

No. 94-9760. GRESHAM *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 654 A. 2d 871.

No. 94-9761. MACRI *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 94-9762. WILLIAMSON ET AL. *v.* HAYWOOD COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 35 F. 3d 558.

No. 94-9763. DAMON, AKA RALPH-BEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 273.

No. 94-9764. YANEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 276.

No. 94-9765. WALKER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 540 Pa. 80, 656 A. 2d 90.

No. 94–9766. HINDI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 53 F. 3d 334.

No. 94–9767. HOOVER *v.* YANICH, DISTRICT JUSTICE, DAUPHIN COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 315.

No. 94–9768. CHAPARRO *v.* EASTON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1221.

No. 94–9769. BROWN *v.* AUDUBON INSURANCE CO. ET AL. (two judgments). Ct. App. La., 3d Cir. Certiorari denied. Reported below: 644 So. 2d 1163.

No. 94–9770. SIMMS *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 892 S. W. 2d 735.

No. 94–9771. VELEZ *v.* SPENCE CHAPIN ADOPTION AGENCY ET AL. C. A. 2d Cir. Certiorari denied.

No. 94–9772. YOUNG *v.* WHITE ET AL. Ct. App. Utah. Certiorari denied.

No. 94–9774. HERNANDEZ-SOLIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 283.

No. 94–9775. SEKOIAN *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 94–9776. SHIGEMURA *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 45 F. 3d 250.

No. 94–9777. ROCA SUAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 43 F. 3d 1480.

No. 94–9778. STONE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1218.

No. 94–9779. BRITTON *v.* NEVADA DEPARTMENT OF PRISONS STAFF ET AL. C. A. 9th Cir. Certiorari denied.

No. 94–9780. ASKEW *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 94–9781. GILES *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 314.

No. 94-9782. SKAGGS *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 94-9783. FELIX-SANTOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 50 F. 3d 1.

No. 94-9784. SAENZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1070.

No. 94-9785. FERGUSON *v.* LAMB ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 266.

No. 94-9786. MCCOY *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 94-9787. FORD *v.* CITY OF ROCKFORD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1221.

No. 94-9788. ARIAS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 52 F. 3d 1123.

No. 94-9790. BROWN *v.* ROBEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 94-9792. SOLIMINE *v.* INTERNATIONAL LAW STUDENTS ASSN. ET AL. C. A. 1st Cir. Certiorari denied.

No. 94-9793. INIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 94-9794. WATERS *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 46 F. 3d 1506.

No. 94-9795. LONGWORTH *v.* WRIGHT, SUPERINTENDENT, CLALLAM BAY CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 15.

No. 94-9796. HOLLY *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 651 So. 2d 707.

No. 94-9797. MITCHELL ET UX. *v.* KEENAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 50 F. 3d 473.

No. 94-9798. FRANKLIN *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 318 S. C. 47, 456 S. E. 2d 357.

No. 94-9799. FIELDS *v.* MCANNALLY. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 14.

No. 94–9801. ADAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 94–9802. SIMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 273.

No. 94–9804. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 318.

No. 94–9805. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 55 F. 3d 289.

No. 94–9806. SPILIOTIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1048.

No. 94–9807. NEWTON *v.* UNITED STATES;
No. 95–5008. MOSS *v.* UNITED STATES;
No. 95–5086. BATTEN *v.* UNITED STATES; and
No. 95–5089. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 44 F. 3d 913.

No. 94–9808. SCOTT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 47 F. 3d 904.

No. 94–9809. MCKINNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 283.

No. 94–9810. LAURY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 145.

No. 94–9811. DAVIS *v.* HENNEPIN COUNTY DEPARTMENT OF CHILDREN & FAMILY SERVICES. Ct. App. Minn. Certiorari denied. Reported below: 527 N. W. 2d 835.

No. 94–9812. MCDOWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 94–9813. LOCKETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 287.

No. 94–9814. CUCCINIELLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 318.

No. 94–9815. BELL *v.* RODDY ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 646 So. 2d 967.

No. 94–9816. CARTER *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 888 P. 2d 629.

No. 94–9817. CRAWFORD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1146.

No. 94–9818. MCKIBBEN *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–9819. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1067.

No. 94–9820. MCPETERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 283.

No. 94–9821. CHEATHAM *v.* WILLIAMS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 320.

No. 94–9822. JOHNSON *v.* TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 43 F. 3d 1472.

No. 94–9823. FOURNIER *v.* MAGNUSSON, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 94–9824. HOOKER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 887 P. 2d 1351.

No. 94–9825. GRAY *v.* RUBIN, SECRETARY OF THE TREASURY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 894.

No. 94–9826. ESTRADA, AKA GARCIA, AKA SANCHEZ *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 94–9827. GORDON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 94–9828. MARK *v.* BOROUGH OF HATBORO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 51 F. 3d 1137.

No. 94–9829. RASH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1218.

No. 94–9830. JASKOLSKI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 273.

No. 94-9831. WALLACE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1148.

No. 94-9832. WHITMORE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 94-9833. VAN WAGNER *v.* PENDELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 323.

No. 94-9834. LARSON *v.* DISTRICT COURT OF NORTH DAKOTA, GRAND FORKS COUNTY, ET AL. Sup. Ct. N. D. Certiorari denied.

No. 94-9835. DAUGHTREY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 770.

No. 94-9836. MCCRACKEN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 887 P. 2d 323.

No. 94-9837. TORRES-MORALES, AKA ALCAREZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 339.

No. 94-9838. TAPIA-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 335.

No. 94-9839. WALKER *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 887 P. 2d 301.

No. 94-9840. NANCE *v.* NORTH CAROLINA. Super. Ct. N. C., Rowan County. Certiorari denied.

No. 94-9841. BLACK *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 94-9842. BARAJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 279.

No. 94-9843. TANNEHILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 1049.

No. 94-9844. MARSHALL *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 531.

No. 94–9845. GIBBS *v.* FRANKLIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 49 F. 3d 1206.

No. 94–9846. GIOVANNI *v.* STALDER, SECRETARY, LOUISIANA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 908.

No. 94–9847. HYDE *v.* OFFICE OF SPECIAL COUNSEL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 337.

No. 94–9848. GRESHAM *v.* TRANSPORTATION COMMUNICATIONS INTERNATIONAL UNION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 50 F. 3d 6.

No. 94–9849. JANIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1147.

No. 94–9850. STEVENS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 319 Ark. 640, 893 S. W. 2d 773.

No. 94–9851. LANG *v.* BANK OF NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 530 N. W. 2d 352.

No. 94–9852. ADAMS *v.* BRAXTON, DEPUTY DIRECTOR/INSTITUTIONS, DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS. Ct. App. D. C. Certiorari denied. Reported below: 656 A. 2d 729.

No. 94–9853. BOOKERT *v.* ROTH ET VIR. Sup. Ct. N. M. Certiorari denied. Reported below: 119 N. M. 638, 894 P. 2d 994.

No. 94–9855. CAMPBELL *v.* CALIFORNIA DEPARTMENT OF MOTOR VEHICLES. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 33 Cal. App. 4th 489, 39 Cal. Rptr. 2d 348.

No. 94–9856. ABDUL-WADOOD *v.* WAPLES ET AL. C. A. 7th Cir. Certiorari denied.

No. 94–9857. CHAPMAN *v.* CURRIE MOTORS, INC., ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 264 Ill. App. 3d 1115, 683 N. E. 2d 1302.

No. 94–9858. BAKER *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–2. ASSOCIATION OF FRIGIDAIRE MODEL MAKERS ET AL. *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 271.

No. 95–3. BROWN *v.* KILGORE ET AL. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 95–4. LOPEZ, SHERIFF OF BEXAR COUNTY *v.* VOJVODICH. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 879.

No. 95–5. MOSS *v.* CHASSIN, COMMISSIONER, NEW YORK STATE DEPARTMENT OF HEALTH, ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 209 App. Div. 2d 889, 618 N. Y. S. 2d 931.

No. 95–7. ESSER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 95–8. SICOR LTD. ET AL. *v.* CETUS CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 848.

No. 95–9. BUI *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 419 Mass. 392, 645 N. E. 2d 689.

No. 95–10. TATUM *v.* AUSTIN. C. A. 5th Cir. Certiorari denied. Reported below: 47 F. 3d 427.

No. 95–11. RUST *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 472.

No. 95–12. GUST ET AL. *v.* LEVY. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 268 Ill. App. 3d 355, 643 N. E. 2d 1206.

No. 95–13. EXECUTIVE LEASING CORP. ET AL. *v.* BANCO POPULAR DE PUERTO RICO, AS SUCCESSOR IN INTEREST TO BANCO DE PONCE, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 48 F. 3d 66.

No. 95–14. MORGAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 51 F. 3d 1105.

No. 95–15. PORTLAND HOUSING AUTHORITY *v.* DOE ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 656 A. 2d 1200.

No. 95–16. MANDEL *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 10th Cir. Certiorari denied. Reported below: 38 F. 3d 1119.

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No. 95–17. SCHUELLER *v.* ASHLEY MEMORIAL HOSPITAL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 1136.

No. 95–18. O'NEAL *v.* JUDICIAL QUALIFICATION COMMISSION OF GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 326, 454 S. E. 2d 780.

No. 95–19. ALLGOOD *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 41 M. J. 492.

No. 95–20. CIMERMANCIC *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 95–21. MCAULIFFE ET AL. *v.* SHERWIN MANOR NURSING CENTER, INC. C. A. 7th Cir. Certiorari denied. Reported below: 37 F. 3d 1216.

No. 95–22. SUROS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 209 App. Div. 2d 203, 618 N. Y. S. 2d 532.

No. 95–23. RODEN, TRUSTEE OF ERNEST M. STILL TRUST, ET AL. *v.* BLACKWELL LAND CO., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 333.

No. 95–24. L. K. COMSTOCK & CO., INC., ET AL. *v.* LOUISIANA POWER & LIGHT CO. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 319.

No. 95–29. JACOBS *v.* GUIDO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 765.

No. 95–30. FISHELL ET UX. *v.* SOLTOW ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1168.

No. 95–32. DEVAULT *v.* DEVAULT. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 95–33. TYTOR *v.* BOARD OF TRUSTEES, LARAMIE COUNTY SCHOOL DISTRICT NO. 2, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 286.

No. 95–34. JEFFRIES *v.* HARLESTON, PRESIDENT OF CITY COLLEGE OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 9.

No. 95–36. TERRY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 269 Ill. App. 3d 1128, 685 N. E. 2d 454.

No. 95–37. BERARDI *v.* ANHEUSER-BUSCH, INC. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 1223.

No. 95–38. MURRAY ET AL. *v.* STUCKEYS, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 50 F. 3d 564.

No. 95–40. KMART CORP. *v.* LAUGHLIN. C. A. 10th Cir. Certiorari denied. Reported below: 50 F. 3d 871.

No. 95–41. ZIMMERMAN *v.* OFFICERS FOR JUSTICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 334.

No. 95–43. BENNETT ENTERPRISES, INC. *v.* DOMINO'S PIZZA, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 45 F. 3d 493.

No. 95–45. PIRKLE ET AL. *v.* OGONTZ CONTROLS CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 52 F. 3d 344.

No. 95–46. MATZKIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 322.

No. 95–47. CLASS OF 48+1 AND THE INTERVENOR PLAINTIFFS, SUCCESSORS IN INTEREST TO KING *v.* GREENBLATT ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 52 F. 3d 1.

No. 95–48. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 1128.

No. 95–49. ILLINOIS *v.* OLIVERA. Sup. Ct. Ill. Certiorari denied. Reported below: 164 Ill. 2d 382, 647 N. E. 2d 926.

No. 95–50. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 95–51. DILLON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 95–52. JOHNS *v.* WARE COUNTY BOARD OF COMMISSIONERS ET AL. Super. Ct. Ware County, Ga. Certiorari denied.

No. 95–54. CITY OF PHILADELPHIA *v.* AFRICA ET AL.; and
No. 95–5058. AFRICA *v.* CITY OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 49 F. 3d 945.

No. 95–55. TAYLOR *v.* CUMMINS ATLANTIC, INC. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1217.

No. 95–58. COHEN *v.* UNITED STATES; and
No. 95–93. SMITH *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 46 F. 3d 1223.

No. 95–59. ZEBULON ENTERPRISES, INC., ET AL. *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 267 Ill. App. 3d 1084, 684 N. E. 2d 1123.

No. 95–61. PETITO *v.* PIFFATH, ADMINISTRATRIX OF THE ESTATE OF PIFFATH, DECEASED. Ct. App. N. Y. Certiorari denied. Reported below: 85 N. Y. 2d 1, 647 N. E. 2d 732.

No. 95–62. DYNAMIC CONSTRUCTION CO. ET AL. *v.* INSURANCE COMPANY OF NORTH AMERICA. C. A. 6th Cir. Certiorari denied. Reported below: 48 F. 3d 1219.

No. 95–65. HOOPER ET AL. *v.* PERRINO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1216.

No. 95–66. LINCOLN NATIONAL LIFE INSURANCE CO. ET AL. *v.* HARDESTER ET UX. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 70.

No. 95–67. FORD LIFE INSURANCE CO. *v.* MILLER, ADMINISTRATRIX FOR THE ESTATE OF MILLER. Sup. Ct. Ala. Certiorari denied. Reported below: 661 So. 2d 203.

No. 95–68. BORELLI MCNEIL ET AL. *v.* OKLAHOMA CITY URBAN RENEWAL AUTHORITY ET AL. Ct. App. Okla. Certiorari denied.

No. 95–70. COLUMBIA STEEL FABRICATORS, INC., ET AL. *v.* AHLSTROM RECOVERY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 44 F. 3d 800.

No. 95–71. CHRISTUNAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 F. 3d 1220.

No. 95–76. FAIRCHILD, DBA FAIRCHILD WASTE CONTROL *v.* BUENA VISTA CHARTER TOWNSHIP ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 325.

No. 95–77. BOTCHIE *v.* O'DOWD, SHERIFF, CHARLESTON COUNTY, ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 318 S. C. 130, 456 S. E. 2d 403.

No. 95–78. COLOROW *v.* UTAH ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 892 P. 2d 1032.

No. 95–80. HEMMERLE ET AL. *v.* BAKST, TRUSTEE FOR SUN-ISLAND REALTY, INC. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 678.

No. 95–81. BALDERSON *v.* BALDERSON. Sup. Ct. Idaho. Certiorari denied. Reported below: 127 Idaho 48, 896 P. 2d 956.

No. 95–89. BILLS *v.* ASELTINE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 596.

No. 95–90. RODRIGUEZ-GARCIA ET AL. *v.* ESTADO LIBRE ASOCIADO DE PUERTO RICO ET AL. Super. Ct. P. R. Certiorari denied.

No. 95–91. BERKELEY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 95–92. OWEN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 95–94. SALAZAR *v.* PRICE CO. ET AL. C. A. 10th Cir. Certiorari denied.

No. 95–96. PIEDMONT AVIATION, INC. *v.* CROCKER. C. A. D. C. Cir. Certiorari denied. Reported below: 49 F. 3d 735.

No. 95–97. MANGRUM *v.* KENTUCKY; and JACKSON ET AL. *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 95–99. GULF COAST INDUSTRIAL WORKERS UNION *v.* EXXON CHEMICAL AMERICAS. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1281.

No. 95–100. NTDEC ET AL. *v.* NINTENDO OF AMERICA, INC. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 281.

No. 95–101. ANDERSON *v.* CUNARD LINE LTD. C. A. 5th Cir. Certiorari denied.

No. 95–102. TORREBLANCA DE AGUILAR ET AL. *v.* BOEING CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 47 F. 3d 1404.

No. 95–103. KAST *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 48 F. 3d 562.

No. 95–104. NATIONAL REFRACTORIES & MINERALS CORP. *v.* GENERAL TEAMSTERS, WAREHOUSEMEN & HELPERS UNION, LOCAL 890. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1227.

No. 95–106. RIELLY *v.* NEWS GROUP BOSTON, INC., ET AL. App. Ct. Mass. Certiorari denied. Reported below: 38 Mass. App. 909, 644 A. 2d 982.

No. 95–107. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 1033.

No. 95–109. KILEY ET UX. *v.* FIRST NATIONAL BANK OF MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 102 Md. App. 317, 649 A. 2d 1145.

No. 95–113. MAHONEY ET AL. *v.* RFE/RL, INC. C. A. D. C. Cir. Certiorari denied. Reported below: 47 F. 3d 447.

No. 95–115. CHECKERS DRIVE-IN RESTAURANTS, INC. *v.* COMMISSIONER OF PATENTS AND TRADEMARKS. C. A. D. C. Cir. Certiorari denied. Reported below: 51 F. 3d 1078.

No. 95–117. HAMMAD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1067.

No. 95–118. HYUNDAI MERCHANT MARINE CO., LTD. *v.* HYUNDAI CORP., U. S. A., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 768.

No. 95–119. CMK CONSTRUCTION, INC., ET AL. *v.* CARPENTERS' PENSION TRUST FUND—DETROIT AND VICINITY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1167.

No. 95–120. CARSTENSEN *v.* BRUNSWICK CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 49 F. 3d 430.

No. 95–121. AIRCRAFT BRAKING SYSTEMS CORP. *v.* LOCAL 856, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 324.

No. 95–122. GRANBERRY ET AL. *v.* ISLAY INVESTMENTS ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 4th 738, 889 P. 2d 970.

No. 95–123. GRAHAM *v.* MENGEL, CLERK OF THE SUPREME COURT OF OHIO AND SECRETARY OF THE BOARD OF BAR EXAMINERS, ET AL. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 98 Ohio App. 3d 620, 649 N. E. 2d 282.

No. 95–126. BLUE *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 50 F. 3d 22.

No. 95–128. UNITED STATES *v.* COUNTY OF SAN DIEGO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 965.

No. 95–130. CORNISH SHIPPING LTD. *v.* INTERNATIONAL NEDERLANDEN BANK N. V., FKA NMB POSTBANK GROEP, N. V. C. A. 2d Cir. Certiorari denied. Reported below: 53 F. 3d 499.

No. 95–131. MISANO DI NAVIGAZIONE S. P. A. *v.* ENERIA, INDIVIDUALLY AND AS GUARDIAN OF ENERIA, AND AS TUTRIX OF ENERIA ET AL. Ct. App. La., 5th Cir. Certiorari denied.

No. 95–136. KELLEY CO., INC. *v.* RITE-HITE CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 56 F. 3d 1538.

No. 95–140. BREEDLOVE *v.* HART ET AL. Sup. Ct. Va. Certiorari denied.

No. 95–144. R. J. STEICHEN & CO. ET AL. *v.* HONN. Ct. App. Minn. Certiorari denied.

No. 95–146. ROUTE 17 CORP. *v.* TOWN OF ASHLAND ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 50 F. 3d 3.

No. 95–147. GRADY, UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, ET AL. *v.* RHONE-POULENC RORER INC. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 1293.

No. 95–148. SEABURY MANAGEMENT, INC. *v.* PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 322.

No. 95–149. PIPKINS *v.* NEVADA STATE BAR. Sup. Ct. Nev. Certiorari denied. Reported below: 111 Nev. 1728, 916 P. 2d 211.

No. 95–150. ANDRESS *v.* RUNYON, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 324.

No. 95–153. LOZANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 340.

No. 95–154. MILLER ET AL. *v.* PEZZANI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 35 F. 3d 1407.

No. 95–158. BURPO *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 164 Ill. 2d 261, 647 N. E. 2d 996.

No. 95–159. MOHAMED, FKA KERR *v.* KERR ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 53 F. 3d 911.

No. 95–161. TRIEM ET AL. *v.* TAMICO, INC. Super. Ct. Alaska, 1st Jud. Dist. Certiorari denied.

No. 95–162. SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 734.

No. 95–164. STOVER *v.* NORFOLK & WESTERN RAILWAY CO. Sup. Ct. Va. Certiorari denied. Reported below: 249 Va. 192, 455 S. E. 2d 238.

No. 95–165. WATTS *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 636.

No. 95–166. NATIONAL FIDELITY LIFE INSURANCE CO. *v.* CHADIMA, TRUSTEE OF THE GEORGE MILTON CHADIMA AND LILLIAN ESTHER CHADIMA TRUST, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 55 F. 3d 345.

No. 95–168. KESTLER *v.* BOARD OF TRUSTEES OF THE NORTH CAROLINA LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 800.

No. 95–169. METZGER *v.* SEBEK ET AL. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 892 S. W. 2d 20.

No. 95–170. NEW YORK *v.* BANKS. Ct. App. N. Y. Certiorari denied. Reported below: 85 N. Y. 2d 558, 650 N. E. 2d 833.

No. 95–171. PAPAILA *v.* UNIDEN AMERICA CORP. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 54.

No. 95–172. LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT ET AL. *v.* POOLE ET VIR. Ct. App. La., 1st Cir. Certiorari denied.

No. 95–175. FLETCHER'S FINE FOODS, LTD. *v.* GATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 54 F. 3d 1457.

No. 95–180. LAWRENCE PAPER CO. *v.* GOMEZ, KANSAS WORKERS COMPENSATION DIRECTOR, ET AL. Sup. Ct. Kan. Certiorari denied. Reported below: 257 Kan. 932, 897 P. 2d 134.

No. 95–181. UNION UNDERWEAR CO., INC., DBA FRUIT OF THE LOOM *v.* SCEARCE ET AL. Sup. Ct. Ky. Certiorari denied. Reported below: 896 S. W. 2d 7.

No. 95–182. TRIDENT ASSOCIATES LIMITED PARTNERSHIP *v.* METROPOLITAN LIFE INSURANCE CO. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 127.

No. 95–183. BRAZIL-BREASHEARS *v.* BILANDIC ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 53 F. 3d 789.

No. 95–185. FLORIO ET UX. *v.* SKOREPA ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 64.

No. 95–186. RUEBEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1046.

No. 95–187. POINTON *v.* CITY OF CHOCTAW ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 286.

No. 95–188. ROBERTS *v.* SOUTH CAROLINA ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 318 S. C. 219, 456 S. E. 2d 905.

No. 95–189. SANDHAUS ET AL. *v.* WEINREICH. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 810.

No. 95–197. NELSON ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 339.

No. 95–198. DAUBERT ET UX., INDIVIDUALLY AND AS GUARDIANS AD LITEM FOR DAUBERT, ET AL. *v.* MERRELL DOW PHARMACEUTICALS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 43 F. 3d 1311.

No. 95–200. MAGLUTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 44 F. 3d 1530.

No. 95–202. YOUNG ET UX., DBA YOUNG'S DELI AND FORMERLY DBA COUNTRY FAIR STORE NO. 90, ET AL. *v.* COUNTRY

FAIR, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 771.

No. 95–204. GARNER, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF WILEMAN, DECEASED *v.* CAPITAL BLUE CROSS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 314.

No. 95–207. MEADOWS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 132.

No. 95–212. FRED *v.* WACKENHUT CORP. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 53 F. 3d 335.

No. 95–215. HUGHES *v.* BEDSOLE, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF CUMBERLAND COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1376.

No. 95–216. CURLEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 55 F. 3d 254.

No. 95–219. LEE *v.* WALTON. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 888 S. W. 2d 604.

No. 95–228. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1285.

No. 95–229. WONG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 40 F. 3d 1347.

No. 95–231. COGGESHALL DEVELOPMENT CORP. ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 56 F. 3d 81.

No. 95–235. SKIP KIRCHDORFER, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 56 F. 3d 82.

No. 95–238. BHARDWAJ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 817.

No. 95–246. CEMAJ ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1045.

No. 95–251. REPUBLIC WASTE INDUSTRIES, INC. *v.* G. I. INDUSTRIES. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 16.

No. 95–257. GHANAYEM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1438.

No. 95–283. BAUMAN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 43 M. J. 134.

No. 95–285. GILHAM *v.* UNITED STATES; and
No. 95–5697. BARCUS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 16.

No. 95–286. MISSISSIPPI RIVER TRANSMISSION CORP. ET AL. *v.* SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 648 So. 2d 1108.

No. 95–287. ELEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 52 F. 3d 328.

No. 95–302. CRESPO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 54 F. 3d 348.

No. 95–313. OZAR ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 50 F. 3d 1440.

No. 95–317. WOODBRIDGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 336.

No. 95–328. FINLAY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 55 F. 3d 1410.

No. 95–332. SWEARENGEN ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1071.

No. 95–338. MANDACINA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 871.

No. 95–347. BORELLI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 810.

No. 95–5001. MORGAN *v.* CORCORAN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1216.

No. 95–5002. CULBREATH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1050.

No. 95–5003. BAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 268.

No. 95–5005. BAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 45 F. 3d 837.

No. 95–5006. GOSIER *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 165 Ill. 2d 16, 649 N. E. 2d 364.

No. 95–5007. CHRISTY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 540 Pa. 192, 656 A. 2d 877.

No. 95–5009. FIELDS *v.* UNITED STATES; and
No. 95–5479. HUDSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 770.

No. 95–5010. DAWDY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 1427.

No. 95–5011. HAMAMCY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1066.

No. 95–5012. VAN BLERICOM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1148.

No. 95–5013. GUNDERMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 287.

No. 95–5014. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1045.

No. 95–5018. CARMEN-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 282.

No. 95–5019. BRIGHT *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 265, 455 S. E. 2d 37.

No. 95–5020. BRADSHAW *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 193 W. Va. 519, 457 S. E. 2d 456.

No. 95–5023. PHILLIP *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1045.

No. 95–5024. HILL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 643 So. 2d 1071.

No. 95–5025. WILSON *v.* ROGERS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–5026. GONZALEZ *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 314.

No. 95–5027. HICKSON *v.* GARNER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 43 F. 3d 670.

No. 95–5028. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 535.

No. 95–5030. DIAZ *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1041.

No. 95–5031. LEDET *v.* 15TH JUDICIAL DISTRICT COURT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1042.

No. 95–5032. ROBERTSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 1232.

No. 95–5033. PATRICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 269.

No. 95–5034. OUTLOW *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5035. PROSPER *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–5036. PARKS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 656 A. 2d 1137.

No. 95–5037. SHEA *v.* SHEA. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–5038. R. J. *v.* S. L. J. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 892 S. W. 2d 683.

No. 95–5039. PARKER *v.* UNIVERSITY OF MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1066.

No. 95–5040. THOMAS *v.* DROCHNER ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–5041. COPELAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 611.

No. 95–5042. WIITALA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1172.

No. 95–5043. MCSWEEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 684.

No. 95–5044. TURNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 319.

No. 95–5045. LASWELL *v.* FREY. C. A. 6th Cir. Certiorari denied. Reported below: 45 F. 3d 1011.

No. 95–5046. SLIGAR *v.* TULSA REGIONAL MEDICAL CENTER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 338.

No. 95–5047. ROGERS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 95–5048. LANGELLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 312.

No. 95–5049. LAWRENCE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 310, 454 S. E. 2d 446.

No. 95–5050. TERRELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 327.

No. 95–5051. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1050.

No. 95–5052. GONZALES *v.* DUNCAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1141.

No. 95–5054. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 269.

No. 95–5055. DUARTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1067.

No. 95–5057. BROWNELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 335.

No. 95–5059. CAMPBELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 1079.

No. 95–5060. CHARLTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1050.

No. 95–5061. ALEXANDER ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 95–5062. BELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1050.

No. 95–5064. BANDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1243.

No. 95–5065. BETTS *v.* ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 47 F. 3d 1173.

No. 95–5067. JONES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 652 So. 2d 346.

No. 95–5068. MARTINEZ *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 530.

No. 95–5069. JONES *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 40 F. 3d 390.

No. 95–5070. JENKINS *v.* STUART ET AL.; and
No. 95–5274. JENKINS *v.* MCBRIDE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 342.

No. 95–5071. RAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1066.

No. 95–5072. SALES *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 95–5073. MARTINI *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 139 N. J. 3, 651 A. 2d 949.

No. 95–5074. WASHINGTON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 257 Ill. App. 3d 26, 628 N. E. 2d 351.

No. 95–5075. WORTHY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1070.

No. 95–5077. WADE, AKA WITHERSPOON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 63.

No. 95–5078. WILSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 164 Ill. 2d 436, 647 N. E. 2d 910.

No. 95–5079. JOSEPH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 249 Va. 78, 452 S. E. 2d 862.

No. 95–5080. HULL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 41 F. 3d 1431.

No. 95–5082. HIGDON *v.* HENSLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 728.

No. 95–5083. HOLBROOK *v.* CITY OF DALTON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 95.

No. 95–5087. CARPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 54 F. 3d 777.

No. 95–5088. CROSS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1050.

No. 95–5090. BOYD *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 999 F. 2d 1286.

No. 95–5091. BEALS *v.* DEL PAPA, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–5092. MALDONADO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 38 F. 3d 936.

No. 95–5093. KALINSKY *v.* UNEMPLOYMENT APPEALS COMMISSION. Sup. Ct. Fla. Certiorari denied. Reported below: 657 So. 2d 1162.

No. 95–5094. WASHINGTON *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 51 F. 3d 756.

No. 95–5095. DOE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 693.

No. 95–5096. OKPALA *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 95–5097. MULLGRAV *v.* MITCHELL, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 312.

No. 95–5098. JAE *v.* CREESE. C. A. 3d Cir. Certiorari denied.

No. 95–5099. THOMPSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 47 F. 3d 1162.

No. 95–5100. FRYAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1044.

No. 95–5101. FAZZINI *v.* UNITED STATES DEPARTMENT OF JUSTICE. C. A. 7th Cir. Certiorari denied.

No. 95–5102. FAZZINI *v.* GUZIK ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–5103. GILCHRIST *v.* HOLT, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 732.

No. 95–5104. HEADLEY *v.* TILGHMAN, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 53 F. 3d 472.

No. 95–5105. BARRAGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 1032.

No. 95–5106. RHODES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 273.

No. 95–5108. GOCKLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 338.

No. 95–5109. HARDY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 52 F. 3d 147.

No. 95–5110. GORMAN *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 102 Md. App. 791.

No. 95–5111. THOMAS *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 95–5112. MALONE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 49 F. 3d 393.

No. 95–5113. MORTIMER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 429.

No. 95–5114. JEFFREYS *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 50 F. 3d 6.

No. 95–5115. CENTENO-TORRES ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 50 F. 3d 84.

No. 95–5116. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 335.

No. 95–5118. SWEENEY *v.* UNITED STATES; and
No. 95–5134. DELANEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 52 F. 3d 182.

No. 95–5119. PRYOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 332.

No. 95–5120. RIVERA *v.* UNITED STATES; and
No. 95–5143. MONTES-GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 283.

No. 95–5121. OCAMPO-TELLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 F. 3d 69.

No. 95–5122. OYAIRO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 332.

No. 95–5123. SYED *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 52 F. 3d 329.

No. 95–5124. ROSS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 180 Ariz. 598, 886 P. 2d 1354.

No. 95–5125. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1285.

No. 95–5126. CANNADY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 54 F. 3d 544.

No. 95–5127. ALEXANDER *v.* UNITED STATES; and
No. 95–5177. HARRIS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1477.

No. 95–5129. RAMOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 283.

No. 95–5130. STACK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1066.

No. 95–5131. WILLIAMS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1041.

No. 95–5132. WISHON *v.* CITY OF JACKSONVILLE, FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 654 So. 2d 920.

No. 95–5133. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 269.

No. 95–5135. HARE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 49 F. 3d 447.

No. 95–5136. SEAGRAVE *v.* LAKE COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 95–5137. SHULTZ *v.* MCGINNIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 326.

No. 95–5138. PARNELL *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–5140. KRAUSE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 206 Mich. App. 421, 522 N. W. 2d 667.

No. 95–5141. MCCRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 95–5142. NOVAK *v.* NOVAK. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 263 Ill. App. 3d 1121, 683 N. E. 2d 548.

No. 95–5144. MOORE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 568.

No. 95–5145. MYERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 46 F. 3d 668.

No. 95–5146. MARTINEZ ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 335.

No. 95–5147. MCBREARTY *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–5148. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 95–5149. NJOKU *v.* YOUNG ET AL. C. A. D. C. Cir. Certiorari denied.

No. 95–5150. JOHNSON *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 47 F. 3d 423.

No. 95–5152. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1281.

No. 95–5153. SANDERS *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 660 A. 2d 395.

No. 95–5154. WHITE, AKA LIVINGSTON, AKA HILTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1388.

No. 95–5155. LISA A. ET AL. *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN'S SERVICES. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–5156. WILSON *v.* BUREAU OF PRISONS. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 1226.

No. 95–5157. MCCARTHY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 51.

No. 95–5158. SELLERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 889 P. 2d 895.

No. 95–5159. MACK *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 650 So. 2d 1289.

No. 95–5160. KING *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 180 Ariz. 268, 883 P. 2d 1024.

No. 95–5161. HUNT *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 659 So. 2d 960.

No. 95–5162. DAVIS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 657 So. 2d 1169.

No. 95–5163. BISHOP *v.* STATE BAR OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 95–5165. CINEL *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 646 So. 2d 309.

No. 95–5166. MOORE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 889 P. 2d 1253.

No. 95–5169. SWEET *v.* SUTHERLAND ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 326.

No. 95–5170. NOSRATI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 269.

No. 95–5173. OLMOS-ESPARZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 335.

No. 95–5174. PRATT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 52 F. 3d 671.

No. 95–5176. VAUGHN *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1067.

No. 95–5178. COLLIER *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1139.

No. 95–5179. SALAS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 35 F. 3d 577.

No. 95–5180. ANTONELLI *v.* HOLT, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–5181. SPEARMAN *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–5182. WOOD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 272.

No. 95–5183. TRIPATI *v.* AGRA ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–5185. BARRETT *v.* FIELDHOUSE ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–5186. CULLY *v.* ADMINISTRATOR, OHIO BUREAU OF EMPLOYMENT SERVICES, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 71 Ohio St. 3d 1465, 644 N. E. 2d 1387.

No. 95–5188. OSWALD *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 51 F. 3d 277.

No. 95–5189. MILLER *v.* SMITH ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–5190. BOOKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1072.

No. 95–5191. THIERMAN *v.* THIERMAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 48 F. 3d 1213.

No. 95–5192. STEVENSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 62.

No. 95–5193. STAMPER *v.* CHAPLEAU, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 273.

No. 95–5194. THORNTON *v.* LOMBARDO, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 770.

No. 95–5197. DRYDEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 1500.

No. 95–5198. FUTRELL *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 34 F. 3d 1079.

No. 95–5199. DEMAURO *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied.

No. 95–5201. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1280.

No. 95–5202. GLANT *v.* LAMB ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1284.

No. 95–5203. ESCAMILLA *v.* BROOME COUNTY GOVERNMENT ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–5204. MCGLOTHLIN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 896 S. W. 2d 183.

No. 95–5206. MIDDLETON *v.* KENTUCKY. Cir. Ct. Grant County, Ky. Certiorari denied.

No. 95–5208. CUNNINGHAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 54 F. 3d 295.

No. 95–5209. SPELLER *v.* IOWA. C. A. 8th Cir. Certiorari denied. Reported below: 56 F. 3d 69.

No. 95–5210. RICO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 495.

No. 95–5211. AFLLEJE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 1129.

No. 95–5212. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 335.

No. 95–5213. BLAIR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 54 F. 3d 639.

No. 95–5214. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1284.

No. 95–5215. TYLER SHARTLE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 438 Pa. Super. 403, 652 A. 2d 874.

No. 95–5216. RAUSER *v.* BEARD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 896.

No. 95–5217. OKORO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 318.

No. 95–5218. PRESTON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–5219. ROCHA *v.* PRICE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 286.

No. 95–5220. WALTER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 766.

No. 95–5222. ROBINSON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–5223. BENNETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1284.

No. 95–5225. TROUTMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 332.

No. 95–5226. STEPHEN *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–5227. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 95–5229. WATT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 274.

No. 95–5231. MILTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 78.

No. 95–5232. JOHNSON *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTE AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 768.

No. 95–5233. LEGGETT *v.* GEORGE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 342.

No. 95–5234. MIR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 335.

No. 95–5235. JOHNSON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 50 F. 3d 2.

No. 95–5237. MARCUM *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 95–5238. KATHY M. P. *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 192 Wis. 2d 767, 532 N. W. 2d 471.

No. 95–5239. COLEMAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 897 S. W. 2d 319.

No. 95–5240. CONAWAY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 339 N. C. 487, 453 S. E. 2d 824.

No. 95–5241. FIELDS *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 49 F. 3d 1024.

No. 95–5242. HARRISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 335.

No. 95–5243. DUKE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 50 F. 3d 571.

No. 95–5244. EMERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1171.

No. 95–5245. FINCHER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1072.

No. 95–5246. FEBRE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 818.

No. 95–5247. DEMAY *v.* MCGINNIS, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–5248. GREENBERG *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 95–5249. HARRIS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 164 Ill. 2d 322, 647 N. E. 2d 893.

No. 95–5250. HAYWOOD *v.* VETERANS ADMINISTRATION MEDICAL CENTER ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–5252. DEJESUS *v.* STINSON, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 1062.

No. 95–5253. ALLEN *v.* CITY OF AURORA, COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 892 P. 2d 333.

No. 95–5254. REEVES *v.* VANCE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 47 F. 3d 423.

No. 95–5255. CURRY *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 263 Ill. App. 3d 1134, 683 N. E. 2d 554.

No. 95–5256. DELGADO-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1280.

No. 95–5258. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 82.

No. 95–5259. WHITEHEAD *v.* BRADLEY UNIVERSITY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 52 F. 3d 329.

No. 95–5261. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 728.

No. 95–5262. TREVINO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 53 F. 3d 333.

No. 95–5263. SWIST *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 38 Mass. App. 907, 644 N. E. 2d 650.

No. 95–5265. ATKINS *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 95–5266. WHITON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 356.

No. 95–5267. TURNER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 56 F. 3d 83.

No. 95–5268. WINTERS *v.* GENERAL MOTORS ACCEPTANCE CORP. ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–5269. THORNTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 95–5270. BROWNING *v.* FOURTEEN DEFENDANTS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–5271. ADEPEGBA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1281.

No. 95–5272. BOOKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 47 F. 3d 1166.

No. 95–5273. MCLAURIN *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 85 N. Y. 2d 848, 648 N. E. 2d 786.

No. 95–5275. PAQUETTE *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 50 F. 3d 7.

No. 95–5277. HYPOLITE *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 773.

No. 95–5278. RUTHERFORD *v.* HAILEY. Cir. Ct. Cabell County, W. Va. Certiorari denied.

No. 95–5279. RANDALL *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–5281. BOWE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 638.

No. 95–5282. BERGMANN *v.* MCCAUGHTRY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–5283. WATSON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 101 Md. App. 739.

No. 95–5285. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1072.

No. 95–5286. CARMAN *v.* SAUNDERS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 320.

No. 95–5287. CASTILLO *v.* CALIFORNIA DEPARTMENT OF PARKS AND RECREATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 13.

No. 95–5288. BIBBS *v.* WITKOWSKI, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 772.

No. 95–5289. WHITE *v.* JONES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1218.

No. 95–5291. GRIMM *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 95–5292. LOWE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 650 So. 2d 969.

No. 95–5293. MAYWEATHER *v.* TERRELL, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 25 F. 3d 1044.

No. 95–5294. MCCULLOUGH *v.* BURNETT, CIRCUIT JUDGE, CRAIGHEAD COUNTY, ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 42 F. 3d 1396.

No. 95–5295. JONES *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTE AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 95–5297. LAFOUNTAIN *v.* JONES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 272.

No. 95–5298. PERNA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 897.

No. 95–5299. LESKO *v.* REUBEN H. DONNELLEY CORP. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 769.

No. 95–5300. O'BRIEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 277.

No. 95–5301. SIMMONS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 341.

No. 95–5302. GILBREATH *v.* REYNOLDS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 285.

No. 95–5303. PFEIL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1284.

No. 95–5304. WALLACE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 893 P. 2d 504.

No. 95–5305. WHITNEY *v.* YARBOROUGH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1072.

No. 95–5306. TEDDER *v.* JOHNSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 95–5308. PANKEY *v.* CARNAHAN, GOVERNOR OF MISSOURI, ET AL.; and PANKEY *v.* COOK ET AL. Sup. Ct. Mo. Certiorari denied.

No. 95–5310. ASHLEY ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 54 F. 3d 311.

No. 95–5311. WHITE *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 530 N. W. 2d 77.

No. 95–5313. NELSON *v.* NEW JERSEY ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5314. LABANKOFF ET AL. *v.* BAKER, CALIFORNIA CIRCUIT JUDGE, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–5316. TUCKER *v.* DEPARTMENT OF THE ARMY. C. A. 5th Cir. Certiorari denied.

No. 95–5317. VEGA *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 893 P. 2d 107.

No. 95–5319. AVILA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 338.

No. 95–5320. BERGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 16.

No. 95–5321. CHANDLER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 249 Va. 270, 455 S. E. 2d 219.

No. 95–5322. ARMENDAREZ *v.* SHANKS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 337.

No. 95–5323. BREWER *v.* MCKINNEY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 537.

No. 95–5324. WISE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 95–5325. OKAFOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1286.

No. 95–5326. PACHECO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1390.

No. 95–5327. SNYDER *v.* GRAYSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1070.

No. 95–5329. WHITFIELD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 947.

No. 95–5330. WOODY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 55 F. 3d 1257.

No. 95–5331. BELL ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 322.

No. 95–5332. WATKINS *v.* NELSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 287.

No. 95–5333. HAYES, AKA COLE *v.* MCVICAR, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–5334. DEZAINE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 95–5335. HOWELL *v.* SNYDER, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5336. HUDSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 744.

No. 95–5337. LAKRAM *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 207 App. Div. 2d 360, 616 N. Y. S. 2d 200.

No. 95–5338. MCELVEEN *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 167.

No. 95–5339. JOSEPH *v.* CHARLOTTE COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 50 F. 3d 6.

No. 95–5340. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1285.

No. 95–5341. KIMBROUGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 536.

No. 95–5342. KELLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 638.

No. 95–5343. JELINEK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 57 F. 3d 655.

No. 95–5345. MEADOWS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 318.

No. 95–5346. NORRIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 902 S. W. 2d 428.

No. 95–5347. REYNOLDS *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 48 F. 3d 1237.

No. 95–5348. CLEARY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 46 F. 3d 307.

No. 95–5350. HUDGINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 115.

No. 95–5351. PRESLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 64.

No. 95–5353. ZAMBRANO-GAVADIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1048.

No. 95–5354. YOUNG *v.* SALT LAKE CITY. Ct. App. Utah. Certiorari denied.

No. 95–5357. BAUGH *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1390.

No. 95–5359. JACOBS *v.* RONOLLO ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 895 S. W. 2d 136.

No. 95–5360. BENNETT *v.* COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, ET AL. Sup. Ct. Tex. Certiorari denied.

No. 95–5362. ANDERSON *v.* WILLIAMS, SHERIFF, TARRANT COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1281.

No. 95–5363. STANLEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 103.

No. 95–5364. RILEY *v.* PLANTIER, SUPERINTENDENT, ADULT DIAGNOSTIC AND TREATMENT CENTER. C. A. 3d Cir. Certiorari denied.

No. 95–5365. LONGBEHN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 1136.

No. 95–5366. LEE *v.* CARTER ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 95–5367. JAE *v.* DOMOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTE AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5368. LOWERY *v.* HERSEY, JUDGE, DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 659 So. 2d 272.

No. 95–5369. BROWN *v.* LENSING, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–5370. DUSENBERY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 95–5371. GARRETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 53 F. 3d 329.

No. 95–5372. CRAIG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 46 F. 3d 1136.

No. 95–5373. AGUIAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 1127.

No. 95–5374. HEATH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 58 F. 3d 1271.

No. 95–5375. GIRALDO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 54 F. 3d 776.

No. 95–5376. MCKENZIE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 1385.

No. 95–5377. NICHOLS *v.* GRAYSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 171.

No. 95–5378. JANKOWSKI *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTE AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5379. KNAPP *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 95–5380. LITTLE *v.* HATCHER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 95–5381. MARTINEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1281.

No. 95–5382. LEATH *v.* UNITED STATES; and
No. 95–5392. LEATH, AKA THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 770.

No. 95–5383. WHITE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 72 Ohio St. 3d 91, 647 N. E. 2d 787.

No. 95–5384. HERNANDEZ-NUNEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 330.

No. 95–5385. PECK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1287.

No. 95–5386. RUSHING *v.* CHAMPION, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 343.

No. 95–5387. CARRINGTON *v.* TRANSPORT WORKERS' UNION OF AMERICA AFL–CIO ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–5388. MILLER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 339 N. C. 663, 455 S. E. 2d 137.

No. 95–5389. JOHNSON *v.* EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 822.

No. 95–5390. MIDDLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 679.

No. 95–5393. MOORE *v.* UNITED STATES; and
No. 95–5586. ORTIZ ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 323.

No. 95–5394. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 53 F. 3d 545.

No. 95–5396. PARRA *v.* UNITED STATES; and
No. 95–5402. EVANS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 F. 3d 1220.

No. 95–5397. SUTHERLAND *v.* THOMAS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 343.

No. 95–5398. PRINCE *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 95–5399. REEVES *v.* LEWIS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 95–5400. VINING *v.* GEORGIA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1284.

No. 95–5401. BAXTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 774.

No. 95–5403. GALINDO *v.* INGLE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–5404. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 52 F. 3d 331.

No. 95–5405. TRAVIS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 340.

No. 95–5406. ZUCKERMAN *v.* RYAN. C. A. 3d Cir. Certiorari denied.

No. 95–5408. CURIALE *v.* ALASKA ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–5409. BURCHILL *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied.

No. 95–5412. JACKSON *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 95–5413. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1284.

No. 95–5414. BOUTERS *v.* FLORIDA; and KOSHEL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 659 So. 2d 235 (first judgment) and 232 (second judgment).

No. 95–5416. MURPHY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 636.

No. 95–5417. LARETTE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 44 F. 3d 681.

No. 95–5418. RAY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 55 F. 3d 685.

No. 95–5421. TELLIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 341.

No. 95–5422. WANLESS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 95–5423. JONES *v.* OHIO. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 95–5424. MARTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1071.

No. 95–5425. JORDAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 41 F. 3d 668.

No. 95–5426. MONCAYO *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 768.

No. 95–5427. MALLORY *v.* GILMORE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 329.

No. 95–5428. KOWALSKI *v.* CARSON. C. A. 9th Cir. Certiorari denied.

No. 95–5429. MARCANTONIO *v.* RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY, ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 95–5430. LEE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 54 F. 3d 1534.

No. 95–5431. MINOR *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 95–5432. MCGEE *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 191 Wis. 2d 360, 530 N. W. 2d 70.

No. 95–5433. CARR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 38 and 73.

No. 95–5435. STAFFORD *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–5436. SMITH *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 268.

No. 95–5437. ONYEKWULUJE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 818.

No. 95–5438. RACICH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 341.

No. 95–5439. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1038.

No. 95–5440. WHITMILL *v.* ARMONTROUT, ASSISTANT DIRECTOR/ZONE II, MISSOURI DIVISION OF ADULT INSTITUTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 42 F. 3d 1154.

No. 95–5441. BEDNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 825.

No. 95–5442. COOK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 1029.

No. 95–5443. WILSON *v.* GRANT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–5444. BELL *v.* COLLINS, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1046.

No. 95–5445. DAVIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 55 F. 3d 517.

No. 95–5446. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1391.

No. 95–5447. EYA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 1063.

No. 95–5449. SHEE HO *v.* ILLINOIS POWER CO., CLINTON POWER STATION. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 906.

No. 95–5451. HAMILTON *v.* TEXAS BOARD OF PARDONS AND PAROLES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1044.

No. 95–5453. LOCKHART *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 655 So. 2d 69.

No. 95–5454. READ *v.* OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION. Ct. App. Ore. Certiorari denied.

No. 95–5456. SHORTER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 54 F. 3d 1248.

No. 95–5457. HICKS-BEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 649 A. 2d 569.

No. 95–5459. KIRBY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 55 F. 3d 633.

No. 95–5461. FOWLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 42 F. 3d 1389.

No. 95–5462. FELICI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 54 F. 3d 504.

No. 95–5463. BOOTH *v.* MARYLAND. Cir. Ct. Baltimore City, Md. Certiorari denied.

No. 95–5464. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 66.

No. 95–5465. COBB *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 37 F. 3d 1491.

No. 95–5466. CLAWSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 806.

No. 95–5468. LINDOW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1171.

No. 95–5470. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 532.

No. 95–5472. SLOAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 53 F. 3d 799.

No. 95–5475. WESTON *v.* FIRST INTERSTATE BANK OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1149.

No. 95–5476. SPEARS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 636.

No. 95–5478. REED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 775.

No. 95–5481. ELIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 536.

No. 95–5485. TAVARES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 95–5487. KALLESTAD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1044.

No. 95–5488. VERGEL ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 635.

No. 95–5489. SLADON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 30.

No. 95–5490. KETCHUM *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 69 F. 3d 548.

No. 95–5492. QUIROZ-GUTIRREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 341.

No. 95–5493. TORRES-BARRAZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 283.

No. 95–5494. GORDON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 50 F. 3d 11.

No. 95–5497. WALKER ET AL. *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 338 Md. 253, 658 A. 2d 239.

No. 95–5498. COLLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1072.

No. 95–5500. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 636.

No. 95–5502. RICCO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 58.

No. 95–5503. JELLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 637.

No. 95–5504. BALL *v.* WHITE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–5505. DEUTSCH *v.* UNITED STATES DEPARTMENT OF JUSTICE ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5507. HOLT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 897.

No. 95–5509. WASHINGTON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 668 So. 2d 935.

No. 95–5510. STEWART *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 50 F. 3d 21.

No. 95–5511. JACKSON, AKA KING, ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 62.

No. 95–5513. MURCER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 318.

No. 95–5514. JONES, AKA PALMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 283.

No. 95–5515. ID-DIN, AKA STEWART *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 771.

No. 95–5520. SEHORN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 75.

No. 95–5521. SARGENT *v.* COLUMBIA FOREST PRODUCTS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 311.

No. 95–5524. EMBREY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 333.

No. 95–5529. KREUZHAGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 635.

No. 95–5531. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1041.

No. 95–5532. DALY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 45 F. 3d 427.

No. 95–5533. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 269.

No. 95–5535. GEHL ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 50 F. 3d 12.

No. 95–5540. ATTWOOD *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 652 So. 2d 827.

No. 95–5542. GAN-VIEJO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1389.

No. 95–5544. DAUGHENBAUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 171.

No. 95–5546. HILL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 1151.

No. 95–5554. MARRERO CRESPO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 818.

No. 95–5555. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1004.

No. 95–5560. LANE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 55 F. 3d 633.

No. 95–5564. ROSARIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 41.

No. 95–5566. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1038.

No. 95–5568. SIMMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 54 F. 3d 777.

No. 95–5570. LOPEZ PINEDA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 55 F. 3d 693.

No. 95–5571. BIN WU ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 323.

No. 95–5574. LORENZO GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 636.

No. 95–5575. TROUBLEFIELD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 95–5578. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 56 F. 3d 69.

No. 95–5579. JIMINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 636.

No. 95–5580. LOWE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 50 F. 3d 604.

No. 95–5581. LEBLANC *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 393.

No. 95–5583. MARCHANT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 55 F. 3d 509.

No. 95–5588. SANCHEZ-MONTOYA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 54 F. 3d 786.

No. 95–5593. MURDOCK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 50 F. 3d 12.

No. 95–5596. KRESE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 331.

No. 95–5597. MURRAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 74.

No. 95–5598. MCKINNEY *v.* UNITED STATES; and
No. 95–5630. WADE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 664.

No. 95–5599. LUETH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 1225.

No. 95–5608. DANIELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 282.

No. 95–5609. BALONEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 47 F. 3d 429 and 430.

No. 95–5610. FLOWERS ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 55 F. 3d 218.

No. 95–5618. JOHNSON *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 732.

No. 95–5620. IZARD, AKA LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1390.

No. 95–5621. ROJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1041.

No. 95–5622. WALKING EAGLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 283.

No. 95–5624. PRICE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1198.

No. 95–5626. ORLANDER *v.* UNITED STATES PAROLE COMMISSION. C. A. 3d Cir. Certiorari denied.

No. 95–5629. TAY CHU, AKA CHU TAY THUONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 335.

No. 95–5632. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 1385.

No. 95–5634. GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 818.

No. 95–5638. MCWILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 774.

No. 95–5639. MOHANLAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 811.

No. 95–5640. JOSEPH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 1385.

No. 95–5641. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 54 F. 3d 1285.

No. 95–5648. POTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 1385.

No. 95–5652. STOKELY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 819.

No. 95–5657. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 48 F. 3d 1389.

No. 95–5658. OWENS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1532.

No. 95–5660. LAFUENTE ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 54 F. 3d 457.

No. 95–5662. MCCORMICK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 F. 3d 214.

No. 95–5664. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 924.

No. 95–5665. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 74.

No. 95–5666. MAXIM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 55 F. 3d 394.

No. 95–5670. HANCOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 774.

No. 95–5672. FONDREN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 54 F. 3d 533.

No. 95–5676. HANSEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1044.

No. 95–5679. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 664.

No. 95–5682. HESS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1285.

No. 95–5684. HURTADO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 47 F. 3d 577.

No. 95–5686. JOHNSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 1150.

No. 95–5687. ACUNA, AKA GAITAN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1531.

No. 95–5689. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 55 F. 3d 144.

No. 95–5690. KHOI TRONG TRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 75.

No. 95–5691. VAUGHN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1218.

No. 95–5694. BUCHANAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 74.

No. 95–5695. CORDELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–5696. BLAKE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 55 F. 3d 684.

No. 95–5698. ARANGO DE CADAVID *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1389.

No. 95–5699. CROWDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1146.

No. 95–5705. MURILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 731.

No. 95–5706. LIPMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 318.

No. 95–5707. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 95–5708. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–5711. SKYERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 1386.

No. 95–5713. BOYER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 55 F. 3d 296.

No. 95–5714. BEAVERS *v.* NETHERLAND, WARDEN, ET AL. Sup. Ct. Va. Certiorari denied.

No. 95–5715. PASTOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 75.

No. 95–5716. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1391.

No. 95–5718. SAIYED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 53 F. 3d 329.

No. 95–5720. HUGHES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 732.

No. 95–5724. WILSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 95–5726. WATROBA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 28.

No. 95–5730. COLEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 95–5731. COVARRUBIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1068.

No. 95–5734. OGANDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 340.

No. 95–5742. OBIUKWU *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1071.

No. 95–5753. HEWITT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1070.

No. 95–5773. OSBORNE *v.* MONTGOMERY ENGINEERING CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 816.

No. 95–5774. KUPKA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1078.

No. 94–1691. NEW YORK *v.* SPENCER. Ct. App. N. Y. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 84 N. Y. 2d 749, 646 N. E. 2d 785.

No. 94–1857. BEYER ET AL. *v.* SIMMONS. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 44 F. 3d 1160.

No. 94–1939. SOUTH CAROLINA *v.* FOSSICK. Sup. Ct. S. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 317 S. C. 375, 453 S. E. 2d 899.

No. 94–1969. NEBRASKA *v.* RUST. Sup. Ct. Neb. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 247 Neb. 503, 528 N. W. 2d 320.

No. 94–1973. MONDRAGON, SECRETARY, NEW MEXICO DEPARTMENT OF CORRECTIONS, ET AL. *v.* SMITH. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 50 F. 3d 801.

No. 94–2111. DUTTON, WARDEN *v.* HOUSTON. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 50 F. 3d 381.

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No. 94–1829. ALASKA FISH & WILDLIFE FEDERATION & OUTDOOR COUNCIL, INC., ET AL. *v.* ALASKA ET AL. C. A. 9th Cir. Motion of petitioners for leave to intervene in order to file a petition for writ of certiorari denied. Certiorari denied. Reported below: 54 F. 3d 549.

No. 94–1841. RUYLE ET AL. *v.* CONTINENTAL OIL CO. C. A. 10th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 44 F. 3d 837.

No. 94–1916. SAC-CO INC., DBA ACME CASH REGISTER CO., FKA CBS LIQUOR CONTROL, INC. *v.* AT&T GLOBAL INFORMATION SOLUTIONS CO., FKA NCR CORP. C. A. 6th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 43 F. 3d 1076.

No. 94–2069. SPECTRAMED, INC. *v.* BAXTER HEALTHCARE CORP. ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 49 F. 3d 1575.

No. 95–42. A. UBERTI & C. *v.* SUPERIOR COURT OF ARIZONA, COUNTY OF PIMA (CORDOVA ET UX., REAL PARTIES IN INTEREST). Sup. Ct. Ariz. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 181 Ariz. 565, 892 P. 2d 1354.

No. 95–79. OLSZEWSKI *v.* AMERICAN TELEPHONE & TELEGRAPH CO. C. A. 3d Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 52 F. 3d 316.

No. 95–5224. WALL *v.* AT&T TECHNOLOGIES, INC. C. A. 4th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 45 F. 3d 428.

No. 94–1885. NEW JERSEY *v.* SAEZ ET AL. Sup. Ct. N. J. Motions of respondents Orlando Navarro and Luis Saez for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 139 N. J. 279, 653 A. 2d 1130.

No. 94–1942. MCKNIGHT, PERSONAL REPRESENTATIVE OF THE ESTATE OF MCKNIGHT, ET AL. *v.* AMERICAN CYANAMID

Co. C. A. 4th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 48 F. 3d 1216.

No. 95–28. SCHERING CORP. *v.* FOOD AND DRUG ADMINISTRATION. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 51 F. 3d 390.

No. 95–35. ORTHO PHARMACEUTICAL CORP. *v.* GENETICS INSTITUTE, INC., ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 52 F. 3d 1026.

No. 95–264. KRAMER *v.* TRIBE. C. A. 3d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 52 F. 3d 315.

No. 94–1950. SHAPER *v.* TRACY, TAX COMMISSIONER OF OHIO, ET AL. Ct. App. Ohio, Franklin County. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 97 Ohio App. 3d 760, 647 N. E. 2d 550.

No. 94–1964. SHOEMAKER, FORMER CHIEF, OHIO ADULT PAROLE AUTHORITY, ET AL. *v.* KELLOGG ET AL. C. A. 6th Cir. Motion of respondent Glen S. Kellogg for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 46 F. 3d 503.

No. 94–2027. MONTGOMERY SECURITIES ET AL. *v.* DANNENBERG ET AL. C. A. 9th Cir. Motion of American Bankers Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 50 F. 3d 615.

No. 94–2060. ARCO PRODUCTS CO. *v.* GRAHAM OIL CO. C. A. 9th Cir. Motion of Kaiser Foundation Health Plan, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 43 F. 3d 1244.

No. 94–2071. TEXACO INC. ET AL. *v.* WILLIAMS ET AL. C. A. 5th Cir. Motion of petitioners to consolidate this petition with No. 94–1387, *Yamaha Motor Corp., U. S. A., et al.* v. *Calhoun et al., Individually and as Administrators of the Estate of Cal-*

houn, Deceased [certiorari granted, 514 U. S. 1126], denied. Certiorari denied. Reported below: 47 F. 3d 765.

No. 94–2135. CITY OF MORGAN CITY *v.* SOUTHERN LOUISIANA ELECTRIC COOPERATIVE ASSN. ET AL. C. A. 5th Cir. Motions of Colorado Association of Municipal Utilities, Municipal Electric Systems of Oklahoma, Inc., and American Public Power Association et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 31 F. 3d 319.

No. 94–8642. CRAWFORD *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition.

No. 94–9091. LEE *v.* UNITED STATES. C. A. 7th Cir. Certiorari before judgment denied.

No. 94–9234. SAUNDERS *v.* AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. C. A. 3d Cir. Certiorari before judgment denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition.

No. 94–9368. CALLAHAN *v.* SIMMONS, JUDGE, CIRCUIT COURT OF MICHIGAN, WAYNE COUNTY. C. A. 6th Cir. Motion of respondent for award of damages denied. Certiorari denied. Reported below: 47 F. 3d 1167.

No. 95–53. COLUMBIA GULF TRANSMISSION CO. *v.* SLAUGHTER, SECRETARY, DEPARTMENT OF REVENUE AND TAXATION OF LOUISIANA. Sup. Ct. La. Motion of American Gas Association for leave to file a brief as *amicus curiae* denied. Certiorari denied. Reported below: 653 So. 2d 522.

No. 95–64. DAVIS *v.* ALABAMA ET AL. C. A. 11th Cir. Motion of Joe R. Whatley to substitute class representative in place of deceased petitioner denied. Certiorari denied. Reported below: 52 F. 3d 300.

No. 95–85. REEBOK INTERNATIONAL LTD. ET AL. *v.* BANQUE INTERNATIONALE A. LUXEMBOURG S. A. C. A. 9th Cir. Motion of International AntiCounterfeiting Coalition for leave to file a brief as *amicus curiae* out of time denied. Certiorari denied. Reported below: 49 F. 3d 1387.

No. 95–116. WINTERS *v.* COSTCO WHOLESALE GROUP BENEFITS PROGRAM AND CONCEPT ADMINISTRATORS, INC. C. A. 9th

Cir. Motions of National Association of Insurance Commissioners and Northwest Women's Law Center et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 49 F. 3d 550.

No. 95–125. GENERAL MOTORS CORP. *v.* CITY OF KANSAS CITY. Ct. App. Mo., Western Dist. Motion of Committee on State Taxation for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 895 S. W. 2d 59.

No. 95–127. VAN KLASSENS, INC., ET AL. *v.* IMAGINEERING, INC. C. A. Fed. Cir. Motion of Pass & Seymour, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 53 F. 3d 1260.

No. 95–155. DELOITTE & TOUCHE *v.* MILLER ET AL. C. A. 9th Cir. Motion of American Institute of Certified Public Accountants for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 35 F. 3d 1407.

No. 95–178. HOWELL *v.* MAUZY ET AL. Sup. Ct. Tex. Motion of petitioner to remand case to Supreme Court of Texas denied. Certiorari denied.

No. 95–203. CITY OF MEMPHIS ET AL. *v.* EAST BROOKS BOOKS, INC., DBA GETWELL BOOKMART AND AIRPORT ADULT THEATER, ET AL. C. A. 6th Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 48 F. 3d 220.

No. 95–208. MURRAY, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, MURRAY ET AL. *v.* MONTROSE COUNTY SCHOOL DISTRICT RE–1J. C. A. 10th Cir. Motion of National Association of Protection and Advocacy Systems et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 51 F. 3d 921.

OCTOBER 4, 1995

Certiorari Denied

No. 95–6006 (A–300). LANE *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE STEVENS and JUSTICE GINSBURG would

grant the application for stay of execution. Reported below: 59 F. 3d 1241.

OCTOBER 5, 1995

Certiorari Granted

No. 94–1941. UNITED STATES *v.* VIRGINIA ET AL.; and

No. 94–2107. VIRGINIA ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Briefs of petitioners are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, November 16, 1995. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, December 15, 1995. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 3, 1996. This Court's Rule 29.2 does not apply. JUSTICE THOMAS took no part in the consideration or decision of these petitions. Reported below: 976 F. 2d 890 and 44 F. 3d 1229.

No. 95–5207. COOPER *v.* OKLAHOMA. Ct. Crim. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, November 16, 1995. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, December 15, 1995. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Wednesday, January 3, 1996. This Court's Rule 29.2 does not apply. Reported below: 889 P. 2d 293.

OCTOBER 10, 1995

Certiorari Granted—Reversed and Remanded. (See No. 94–1419, *ante*, p. 1.)

Certiorari Dismissed

No. 95–31. FAULKNER *v.* JONES, CHAIRMAN, BOARD OF VISITORS OF THE CITADEL, ET AL. C. A. 4th Cir. Motion of Nancy Mellette to add party or to intervene denied. Certiorari dismissed as moot. Reported below: 51 F. 3d 440.

Miscellaneous Orders

No. A–299. UNION SECURITY LIFE INSURANCE CO. *v.* CROCKER. Application for stay of enforcement of judgment of

the Supreme Court of Alabama, case No. 1931672, entered on July 14, 1995, and modified on September 8, 1995, presented to JUSTICE KENNEDY, and by him referred to the Court, granted pending the timely filing and disposition by this Court of a petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

No. D–1576. IN RE DISBARMENT OF ROSS. Disbarment entered. [For earlier order herein, see 515 U. S. 1176.]

No. 94–805. BUSH, GOVERNOR OF TEXAS, ET AL. *v.* VERA ET AL.;

No. 94–806. LAWSON ET AL. *v.* VERA ET AL.; and

No. 94–988. UNITED STATES *v.* VERA ET AL. D. C. S. D. Tex. [Probable jurisdiction noted, 515 U. S. 1172.] Motions of the Solicitor General and the state and private appellants for divided argument granted in part, and the time is divided as follows: state appellants, 20 minutes; private appellants, 10 minutes; the Solicitor General, 10 minutes; and appellees, 40 minutes.

No. 94–1175. BANK ONE CHICAGO, N. A. *v.* MIDWEST BANK & TRUST CO. C. A. 7th Cir. [Certiorari granted, 515 U. S. 1157.] Motion of New York Clearing House Association for leave to file a brief as *amicus curiae* granted.

No. 94–1453. PEACOCK *v.* THOMAS. C. A. 4th Cir. [Certiorari granted, 514 U. S. 1126.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 94–1471. VARITY CORP. *v.* HOWE ET AL. C. A. 8th Cir. [Certiorari granted, 514 U. S. 1082.] Motion of respondents for leave to file a supplemental brief denied.

No. 95–5565. IN RE RIASCOS. C. A. 11th Cir. Petition for writ of common-law certiorari denied. Reported below: 29 F. 3d 641.

No. 95–5878. IN RE LORENZ;

No. 95–5895. IN RE MEYER; and

No. 95–5973. IN RE ZACK. Petitions for writs of habeas corpus denied.

No. 95–314. IN RE FLEMING;
No. 95–5576. IN RE SANDERS; and
No. 95–5613. IN RE HARVEY. Petitions for writs of mandamus denied.

No. 95–5284. IN RE CHUDNOVSKY; and
No. 95–5644. IN RE COLEN. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied. (See also No. 95–5565, *supra.*)

No. 94–1940. MICHIGAN *v.* MALLORY ET AL. Ct. App. Mich. Certiorari denied.

No. 94–1968. ADAMS ET AL. *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH, INC., ET AL.; and
No. 95–44. BECHERER ET AL. *v.* ADAMS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 43 F. 3d 1054.

No. 94–2064. SYCUAN BAND OF MISSION INDIANS ET AL. *v.* PFINGST, DISTRICT ATTORNEY, SAN DIEGO COUNTY; and
No. 95–174. PFINGST, DISTRICT ATTORNEY, SAN DIEGO COUNTY *v.* SYCUAN BAND OF MISSION INDIANS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 54 F. 3d 535.

No. 94–2102. U. A. LOCAL NO. 343 OF THE JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL–CIO, ET AL. *v.* NOR-CAL PLUMBING, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1465.

No. 94–2115. YOUNGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1051.

No. 94–2117. KIDD ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 175.

No. 94–9090. MATA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 94–9650. EASTER *v.* STAINER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 13.

No. 94–9800. GONZALEZ *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 310.

No. 95–39. JEKOT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 F. 3d 1176.

No. 95–56. FORT WAYNE NATIONAL CORP. *v.* INDIANA DEPARTMENT OF STATE REVENUE ET AL. Sup. Ct. Ind. Certiorari denied. Reported below: 649 N. E. 2d 109.

No. 95–63. LTV STEEL CO., INC., ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 53 F. 3d 478.

No. 95–75. ROBERTSON-AIKMAN *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1281.

No. 95–82. SPRECHER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 50 F. 3d 3.

No. 95–84. CUBAN AMERICAN BAR ASSN., INC., ET AL. *v.* CHRISTOPHER, SECRETARY OF STATE, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 1412.

No. 95–95. UNISYS CORP., DBA REMINGTON RAND UNIVAC ET AL. *v.* ANDERSON ET AL.; and

No. 95–281. ANDERSON ET AL. *v.* UNISYS CORP., DBA REMINGTON RAND UNIVAC ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 47 F. 3d 302.

No. 95–108. LINDEMAN *v.* CITY OF MIAMI. C. A. 11th Cir. Certiorari denied.

No. 95–110. RYE PSYCHIATRIC HOSPITAL CENTER, INC. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 1163.

No. 95–114. STUBBLEFIELD CONSTRUCTION CO. ET AL. *v.* CITY OF SAN BERNARDINO. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 32 Cal. App. 4th 687, 38 Cal. Rptr. 2d 413.

No. 95–139. COOPER TIRE & RUBBER CO. *v.* ST. PAUL FIRE & MARINE INSURANCE CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 365.

No. 95–192. BLACKSTON *v.* HEFFLER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1389.

No. 95–194. HAAS *v.* UNITED STATES POSTAL SERVICE, c/o GENERAL MAIL FACILITY, PITTSBURGH, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 314.

No. 95–196. DE MERE *v.* JAIN. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 686.

No. 95–201. PINE *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 889 S. W. 2d 625.

No. 95–206. MARUCA *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 95–217. WITTY *v.* HEWLETT-PACKARD COLORADO, INC., AKA HEWLETT-PACKARD. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 287.

No. 95–218. NOBERS ET AL. *v.* CRUCIBLE, INC., ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 431 Pa. Super. 398, 636 A. 2d 1146.

No. 95–220. PACIFIC LUMBER CO. ET AL. *v.* KAYES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 1449.

No. 95–221. ALLAN & ALLAN ARTS, LTD., DBA GATEWAY PLAYHOUSE *v.* ROSENBLUM. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 201 App. Div. 2d 136, 615 N. Y. S. 2d 410.

No. 95–222. VOYAGER GUARANTY INSURANCE CO. ET AL. *v.* WHITSON ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–225. WALL *v.* GTE SOUTHWEST INC. C. A. 5th Cir. Certiorari denied. Reported below: 55 F. 3d 633.

No. 95–233. RAYTECH CORP. *v.* WHITE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 187.

No. 95–234. MONK *v.* QUALITY ELECTRIC SUPPLY CO. C. A. 3d Cir. Certiorari denied. Reported below: 53 F. 3d 1381.

No. 95–236. HILL *v.* CITY OF CHESTER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 815.

No. 95–237. SEBASTIAN INTERNATIONAL, INC. *v.* LONGS DRUG STORES CORP. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 1073.

No. 95–241. WONG ET AL. *v.* CARSON CITY COUNCIL ET AL. Sup. Ct. Cal. Certiorari denied.

No. 95–245. CAMBONI ET UX. *v.* WHITEN ET AL. Ct. App. Ariz. Certiorari denied.

No. 95–247. MEREX A. G. ET AL. *v.* FAIRCHILD WESTON SYSTEMS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 765.

No. 95–249. BENSALEM TOWNSHIP ET AL. *v.* BLANCHE ROAD CORP., T/A BLANCHE ROAD ASSOCIATES, I. C. A. 3d Cir. Certiorari denied. Reported below: 57 F. 3d 253.

No. 95–252. CAUDLE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 95–253. UNITED STATES ET AL. *v.* KOCH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 47 F. 3d 1015.

No. 95–256. INSINGER MACHINE CO. *v.* PHILADELPHIA TAX REVIEW BOARD. Commw. Ct. Pa. Certiorari denied. Reported below: 165 Pa. Commw. 344, 645 A. 2d 365.

No. 95–260. AIU INSURANCE CO. ET AL. *v.* W. R. GRACE & COMPANY-CONN. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1067.

No. 95–261. JONES ET AL. *v.* NORFOLK SOUTHERN CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1066.

No. 95–262. FEAVER, ACTING SECRETARY OF FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, ET AL. *v.* ESTATE OF LECLAIR ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1390.

No. 95–263. CHESHIRE MEDICAL CENTER *v.* W. R. GRACE & CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 49 F. 3d 26.

No. 95–267. NEBRASKA *v.* YELLI. Sup. Ct. Neb. Certiorari denied. Reported below: 247 Neb. 785, 530 N. W. 2d 250.

No. 95–268. STUN-TECH, INC. *v.* RACC INDUSTRIES, INC. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 95–271. MEKKAM *v.* OREGON HEALTH SCIENCES UNIVERSITY ET AL. Ct. App. Ore. Certiorari denied. Reported below: 132 Ore. App. 470, 888 P. 2d 1093.

No. 95–272. RAY *v.* LEHMAN, COMMISSIONER OF PATENTS AND TRADEMARKS. C. A. Fed. Cir. Certiorari denied. Reported below: 55 F. 3d 606.

No. 95–274. INGRAM *v.* HILLSBOROUGH COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1388.

No. 95–275. COEUR D'ALENE TRIBE *v.* IDAHO. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 876.

No. 95–280. BUSER, BY HIS NEXT FRIENDS, BUSER ET AL. *v.* CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 490.

No. 95–284. MILLER *v.* GENTRY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 55 F. 3d 1487.

No. 95–288. BANK OF ISRAEL ET AL. *v.* LEWIN. C. A. 2d Cir. Certiorari denied. Reported below: 56 F. 3d 450.

No. 95–291. SPICKLER *v.* MAINE. C. A. 1st Cir. Certiorari denied. Reported below: 54 F. 3d 764.

No. 95–292. DIBIASE *v.* SMITHKLINE BEECHAM CORP. C. A. 3d Cir. Certiorari denied. Reported below: 48 F. 3d 719.

No. 95–293. GREGORY *v.* ELECTRICAL WORKERS LOCAL 58 PENSION TRUST FUND ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 325.

No. 95–294. COUNTY OF KERN ET AL. *v.* ANDERSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 45 F. 3d 1310.

No. 95–295. COMANCHE INDIAN TRIBE OF OKLAHOMA *v.* HOVIS, JUDGE, DISTRICT COURT OF KIOWA COUNTY, OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 298.

No. 95–297. HUBER *v.* HOWARD COUNTY, MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 61.

No. 95–298. ABB ROBOTICS INC. ET AL. *v.* GMFANUC ROBOTICS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 52 F. 3d 1062.

No. 95–311. DUNCAN *v.* DUNCAN, AKA SCOTT, AKA YOUNG, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 677.

No. 95–312. ROUSSIN *v.* MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 55 F. 3d 350.

No. 95–319. GRANT ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 17.

No. 95–348. OLSEN *v.* PALEY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1050.

No. 95–359. PUDLO *v.* CITY OF CHICAGO. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 271 Ill. App. 3d 107, 648 N. E. 2d 135.

No. 95–374. FULLER, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF FULLER *v.* CUMMINGS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 50 F. 3d 3.

No. 95–377. FITTEN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 179.

No. 95–384. BOYETT *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 150.

No. 95–431. TURNER *v.* GENERAL MOTORS CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1070.

No. 95–5056. HOCHSCHILD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 273.

No. 95–5063. BRISBON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 164 Ill. 2d 236, 647 N. E. 2d 935.

No. 95–5107. PARTIN *v.* ARKANSAS STATE BOARD OF LAW EXAMINERS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 56 F. 3d 69.

No. 95–5117. BROWN *v.* UNITED STATES; and

No. 95–5187. SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 618.

No. 95–5151. JEROME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 637.

No. 95–5164. BOX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 345.

No. 95–5167. RAMEY *v.* BOWSHER, COMPTROLLER GENERAL OF THE UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 53 F. 3d 346.

No. 95–5168. SAHAR *v.* HONEYWELL, INC. C. A. 8th Cir. Certiorari denied. Reported below: 51 F. 3d 278.

No. 95–5171. LOPERA-OCHOA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 95–5172. MEDLOCK *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 887 P. 2d 1333.

No. 95–5221. TALLEY *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ET AL. (two judgments). C. A. 3d Cir. Certiorari denied. Reported below: 52 F. 3d 317.

No. 95–5251. DAVIS *v.* ALEXANDER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 636.

No. 95–5312. JAMES *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 1327.

No. 95–5356. SMITH *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 95–5455. WILLIAMS *v.* DOW ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1051.

No. 95–5460. WRIGHT *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 214 App. Div. 2d 995, 626 N. Y. S. 2d 647.

No. 95–5477. SHOWN *v.* BOONE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 56 F. 3d 78.

No. 95–5480. FRIEDMAN *v.* MONTANA. C. A. 9th Cir. Certiorari denied.

No. 95–5482. FINNEGAN *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 85 N. Y. 2d 53, 647 N. E. 2d 758.

No. 95–5483. FARD, AKA THOMPSON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–5484. AZUBUKO *v.* MASSACHUSETTS COMMISSIONER OF REGISTRY. C. A. 1st Cir. Certiorari denied. Reported below: 45 F. 3d 423.

No. 95–5491. WOHLFORD ET UX. *v.* MAYS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 53 F. 3d 330.

No. 95–5496. JENKINS *v.* MAQUEEN ET AL. C. A. 10th Cir. Certiorari denied.

No. 95–5501. SHAH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 637.

No. 95–5508. HUDSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 166.

No. 95–5517. JORGENSON *v.* FILMSERVICE LAB, INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–5518. CALLAHAN *v.* LIACOS ET AL. C. A. 1st Cir. Certiorari denied.

No. 95–5519. CRANE *v.* SNIDER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 13.

No. 95–5522. ROGERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 890 P. 2d 959.

No. 95–5523. HIGHLANDS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 440 Pa. Super. 648, 655 A. 2d 1045.

No. 95–5525. TURNER *v.* CAMPOY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 8 F. 3d 30.

No. 95–5526. DENSMORE *v.* GRAYSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–5527. CORRIGAN *v.* ALLSTATE INSURANCE CO. Ct. App. Wash. Certiorari denied.

No. 95–5530. MIER *v.* NAUHAUS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 816.

No. 95–5534. TURNER *v.* MOATS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 62.

No. 95–5536. FARMER *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 448 Mich. 875, 530 N. W. 2d 753.

No. 95–5537. BINNICK *v.* LANCASTER COUNTY PERSONNEL BOARD ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 51 F. 3d 277.

No. 95–5538. L'GGRKE *v.* CITY OF TULSA ET AL. C. A. 10th Cir. Certiorari denied.

No. 95–5547. ETHERIDGE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 903 S. W. 2d 1.

No. 95–5548. DAVILA *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 95–5549. FOSTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 654 So. 2d 112.

No. 95–5550. STANFIELD *v.* OSBORNE INDUSTRIES, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 867.

No. 95–5551. JOHNSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 95–5552. LANASA *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 95–5553. ADAMS *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 95–5556. CHAUNCEY *v.* CHAUNCEY. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 95–5557. SOLIMINE *v.* DEDHAM, MASSACHUSETTS, DISTRICT COURT ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 51 F. 3d 264.

No. 95–5558. BRUNO *v.* MELE, SHERIFF, HARFORD COUNTY, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 50 F. 3d 5.

No. 95–5559. CONEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 653 So. 2d 1009.

No. 95–5561. WILLIAMS *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 95–5562. JOHN R. *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 95–5563. JERNIGAN *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1043.

No. 95–5567. PEREZ *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 95–5573. DENNISON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 440 Pa. Super. 646, 655 A. 2d 1043.

No. 95–5577. RIVERA *v.* LONG ISLAND RAILROAD. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 765.

No. 95–5585. CRAWFORD *v.* GARNER, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–5590. KITSOS *v.* REVIEW BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Certiorari denied.

No. 95–5591. WESLEY *v.* YOUNG ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 329.

No. 95–5592. TILLMAN *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 282.

No. 95–5594. MORALES *v.* BARTLETT, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 766.

No. 95–5595. ADAMS *v.* COOMBE, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTION. C. A. 2d Cir. Certiorari denied.

No. 95–5601. BELL *v.* HATCHER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 95–5602. JANNEH *v.* CSH–1 HOTEL LIMITED PARTNERSHIP, DBA HOLIDAY INN ARENA ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–5607. HARRIS *v.* CHICAGO POLICE DEPARTMENT. C. A. 7th Cir. Certiorari denied.

No. 95–5611. HOLLOWAY *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 886 S. W. 2d 482.

No. 95–5612. HINES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 638.

No. 95–5614. EMMETT *v.* LAWRY'S RESTAURANTS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 279.

No. 95–5631. THOMAS *v.* NULL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 41 F. 3d 663.

No. 95–5636. BAIRD *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 434 Pa. Super. 662, 640 A. 2d 469.

No. 95–5653. SARANDOS *v.* CITY OF VISALIA, CALIFORNIA, ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 95–5669. FIELDS *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 127 Idaho 904, 908 P. 2d 1211.

No. 95–5677. FERRIS *v.* SGS-THOMSON MICROELECTRONICS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 55 F. 3d 632.

No. 95–5685. BURRIS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 642 N. E. 2d 961.

No. 95–5693. COUSINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1391.

No. 95–5701. TSIMBIDAROS *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–5719. SOLIMINE *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 50 F. 3d 1.

No. 95–5721. GILBERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1229.

No. 95–5727. WRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 66.

No. 95–5728. BULLARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1391.

No. 95–5732. STANSBURY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 4th 824, 889 P. 2d 588.

No. 95–5738. RIGGI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 23 F. 3d 398.

No. 95–5739. CRITTENDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1246.

No. 95–5741. PALMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 63.

No. 95–5743. PUJOL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1072.

No. 95–5748. WILLIAMS *v.* ARIZONA. Super. Ct. Ariz., Maricopa County. Certiorari denied.

No. 95–5751. GALLOWAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 61 F. 3d 908.

No. 95–5752. DUCKETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 637.

No. 95–5758. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 774.

No. 95–5761. LANG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 640.

No. 95–5763. LAZO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 52 F. 3d 330.

No. 95–5766. WINN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1078.

No. 95–5767. WILEY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 165 Ill. 2d 259, 651 N. E. 2d 189.

No. 95–5790. BOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 53 F. 3d 631.

No. 95–5791. BUTLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 56 F. 3d 941.

No. 95–5798. HUSSAIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 1385.

No. 95–5800. HILSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1532.

No. 95–5802. DORSEY *v.* RAGANS, SUPERINTENDENT, CALHOUN CORRECTIONAL INSTITUTION, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 636.

No. 95–5808. MOSAVI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 95–5811. RUTHERFORD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 54 F. 3d 370.

No. 95–5812. MCKAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 30 F. 3d 1418.

No. 95–5813. JACOB *v.* CLARKE, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied. Reported below: 52 F. 3d 178.

No. 95–5814. CHAVEZ-MEJIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 56 F. 3d 78.

No. 95–5817. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 731.

No. 95–5818. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 74.

No. 95–5819. GREEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 55 F. 3d 1513.

No. 95–5820. HARRISON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 55 F. 3d 163.

No. 95–5834. SINGLETON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 129.

No. 95–5835. POOLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 62.

No. 95–5836. LANCASTER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 660.

No. 95–5838. KNOWLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 640.

No. 95–5839. WHITTAKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 46 F. 3d 69.

No. 95–5842. WYCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 639.

No. 95–5843. WEAVER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 55 F. 3d 685.

No. 95–5844. SARABIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 75.

No. 95–5846. FIDEL SANTANA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 639.

No. 95–5848. CASALIS-NOY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 640.

No. 95–5850. READY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 18.

No. 95–5857. GREENWOOD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 659 A. 2d 825.

No. 95–5859. FONSECA-MACHADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1242.

No. 95–5860. FUENTES-MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 1113.

No. 95–5861. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 167.

No. 95–5863. DIAMOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 249.

No. 95–5866. GEHRKE *v.* LEE, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 56 F. 3d 68.

No. 95–5867. HARRISON *v.* ULMER, CHIEF JUDGE, CIRCUIT COURT OF FLORIDA, 6TH JUDICIAL CIRCUIT. Sup. Ct. Fla. Certiorari denied. Reported below: 658 So. 2d 990.

No. 95–5870. MCKENZIE *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 532 N. W. 2d 210.

No. 95–5871. NEWSOME *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 273.

No. 95–5872. NAJERA-RUBIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1240.

No. 95–5877. LEAKS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 47 F. 3d 1157.

No. 95–5880. CAMPBELL ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 49 F. 3d 769.

No. 95–5881. GALLOWAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1069.

No. 95–5886. TRAYNOFF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 53 F. 3d 168.

No. 95–5890. VAN WAGNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 661.

No. 95–5894. MCGREGOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 31 F. 3d 1067.

No. 95–5899. CHARLTON *v.* CRANDELL, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 53 F. 3d 929.

No. 95–5900. JACKSON, AKA ALETOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 55 F. 3d 1219.

No. 95–5911. BURNSIDE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 31.

No. 95–5912. AUSTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1078.

No. 95–5918. REECE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1426.

No. 95–5919. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 F. 3d 690.

No. 95–5922. DUKES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1071.

No. 95–5923. FISHER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 58 F. 3d 96.

No. 95–5924. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1070.

No. 95–5925. GROSSI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1452.

No. 95–5926. PERALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1078.

No. 95–5930. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1285.

No. 95–5931. KAHO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 176.

No. 95–5932. KIRSH ET VIR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 1062.

No. 95–5936. BERGER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1078.

No. 95–5944. MCCLENTON *v.* UNITED STATES (two judgments). C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 770 (first judgment); 53 F. 3d 584 (second judgment).

No. 95–5955. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 63.

No. 95–6011. MATTESON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 191 Wis. 2d 360, 530 N. W. 2d 69.

No. 94–1802. HOSPITAL SAN RAFAEL, INC., ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 42 F. 3d 45.

No. 95–72. LA CIENEGA MUSIC CO. *v.* ZZ TOP ET AL. C. A. 9th Cir. Motion of National Music Publishers' Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 53 F. 3d 950.

No. 95–223. CINCINNATI INSURANCE CO. *v.* ORANGEBURG SAUSAGE CO. Ct. App. S. C. Motions of American Council of Life Insurance and South Carolina Defense Trial Attorneys Association for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 316 S. C. 331, 450 S. E. 2d 66.

No. 95–240. NEWMAN *v.* CONSOLIDATION COAL CO. Super. Ct. Pa. Motion of petitioner for leave to proceed as a seaman granted. Certiorari denied. Reported below: 438 Pa. Super. 703, 652 A. 2d 415.

No. 95–273. KEYSTONE SANITATION CO., INC., ET AL. *v.* ARCATA GRAPHICS FAIRFIELD, INC., ET AL. C. A. 3d Cir. Motion of National Bar Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 60 F. 3d 815.

Rehearing Denied

No. 94–8182. AVERY *v.* BRODEUR, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS, 514 U. S. 1070; and
No. 94–9175. ROAQUIN *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, 515 U. S. 1165. Petitions for rehearing denied.

OCTOBER 16, 1995

Certiorari Granted—Vacated and Remanded

No. 95–167. WALDRON *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Gaudin*, 515 U. S. 506 (1995). Reported below: 53 F. 3d 680.

Miscellaneous Orders

No. M–15. FARR *v.* FLORIDA. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied. JUSTICE STEVENS, JUSTICE KENNEDY, JUSTICE GINSBURG, and JUSTICE BREYER would grant the motion.

No. M–16. MARIAN *v.* GORIS ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 95–5673. GUESS *v.* JONES, SHERIFF. C. A. 6th Cir.;
No. 95–5674. GUESS *v.* WILKINSON ET AL. C. A. 6th Cir.;
No. 95–5703. GUESS *v.* STRAIGHT. C. A. 6th Cir.; and

No. 95–5704. GUESS *v.* MONTGOMERY, ATTORNEY GENERAL OF OHIO. C. A. 6th Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until November 6, 1995, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 95–5984. IN RE FRANKLIN;
No. 95–6038. IN RE ULLRICH;
No. 95–6039. IN RE WALKER;
No. 95–6040. IN RE WOHLGEMUTH;
No. 95–6046. IN RE JEROLD;
No. 95–6047. IN RE KIRK;
No. 95–6048. IN RE LAND;
No. 95–6052. IN RE RENDERMAN;
No. 95–6053. IN RE SANDLIN;
No. 95–6054. IN RE SEAMAN;
No. 95–6055. IN RE PARKER;
No. 95–6056. IN RE PAYNE;
No. 95–6057. IN RE SIERRA;
No. 95–6060. IN RE GOLINI;
No. 95–6061. IN RE GAUTHIER;
No. 95–6062. IN RE GARRETT;
No. 95–6063. IN RE HARPSTER;
No. 95–6064. IN RE DIVINE;
No. 95–6065. IN RE DUTCHER; and
No. 95–6074. IN RE KENNEDY. Petitions for writs of habeas corpus denied.

No. 95–5683. IN RE ESLINGER; and
No. 95–5963. IN RE SAKA. Petitions for writs of mandamus denied.

No. 95–5654. IN RE SWEETING; and
No. 95–5675. IN RE HEMMERLE. Petitions for writs of prohibition denied.

Certiorari Granted

No. 95–244. QUACKENBUSH, CALIFORNIA INSURANCE COMMISSIONER *v.* ALLSTATE INSURANCE CO. C. A. 9th Cir. Certiorari granted. Reported below: 47 F. 3d 350.

No. 95–266. JAFFEE, SPECIAL ADMINISTRATOR FOR ALLEN, DECEASED *v.* REDMOND ET AL. C. A. 7th Cir. Certiorari granted. Reported below: 51 F. 3d 1346.

No. 95–340. UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 751 *v.* BROWN GROUP, INC., DBA BROWN SHOE CO. C. A. 8th Cir. Certiorari granted. Reported below: 50 F. 3d 1426.

Certiorari Denied

No. 94–1818. EQUICOR, INC. *v.* LORDMANN ENTERPRISES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 32 F. 3d 1529.

No. 95–57. GERMINO *v.* DEPARTMENT OF DEFENSE. C. A. Fed. Cir. Certiorari denied. Reported below: 52 F. 3d 345.

No. 95–98. HILLSBOROUGH COUNTY HOSPITAL AUTHORITY, DBA TAMPA GENERAL HOSPITAL, ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 1516.

No. 95–105. AMERICAN MUTUAL LIFE INSURANCE CO. ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 43 F. 3d 1172.

No. 95–111. DELCO DEVELOPMENT CO., INC., ET AL. *v.* MECHANICS & FARMERS SAVINGS BANK, F. S. B. Sup. Ct. Conn. Certiorari denied. Reported below: 232 Conn. 594, 656 A. 2d 1034.

No. 95–135. ERHARD *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1470.

No. 95–138. FRIEDMAN *v.* FIDELITY BROKERAGE SERVICES, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 56 F. 3d 866.

No. 95–141. KANOUSE *v.* GUNSTER, YOAKLEY & STEWART, P. A. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1286.

No. 95–142. HARRIS, TRUSTEE FOR THE CHRISTOPHER HARRIS TRUST *v.* MISSOURI DEPARTMENT OF CONSERVATION. Ct.

App. Mo., Western Dist. Certiorari denied. Reported below: 895 S. W. 2d 66.

No. 95–143. INTERNATIONAL RECTIFIER CORP. *v.* SGS-THOMSON MICROELECTRONICS, INC.; and

No. 95–321. SGS-THOMSON MICROELECTRONICS, INC. *v.* INTERNATIONAL RECTIFIER CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 60 F. 3d 839.

No. 95–145. FREEMAN *v.* PLANNING BOARD OF WEST BOYLSTON ET AL.; and

No. 95–322. PLANNING BOARD OF WEST BOYLSTON ET AL. *v.* FREEMAN. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 419 Mass. 548, 646 N. E. 2d 139.

No. 95–160. GOLD COAST PUBLICATIONS, INC., ET AL. *v.* CORRIGAN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 42 F. 3d 1336.

No. 95–199. NAVAJO NATION *v.* HOPI TRIBE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 908.

No. 95–224. KRAEBEL, DBA BARKLEE REALTY CO. *v.* MICHETTI, COMMISSIONER, NEW YORK CITY DEPARTMENT OF HOUSING, PRESERVATION AND DEVELOPMENT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 1063.

No. 95–300. SKYWARK *v.* UNITED STATES LINES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 1064.

No. 95–303. ROSS YORDY CONSTRUCTION CO., INC., ET AL. *v.* NAYLOR ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 55 F. 3d 285.

No. 95–304. RAFFERTY ET AL. *v.* CITY OF YOUNGSTOWN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 54 F. 3d 278.

No. 95–305. PLAISANCE *v.* TRAVELERS INSURANCE CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1391.

No. 95–306. KIPEN *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 56 F. 3d 82.

No. 95–307. DORMAN ET UX. *v.* JONES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 285.

No. 95–308. PALM BEACH COUNTY ET AL. *v.* WEST PENINSULAR TITLE CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 41 F. 3d 1490.

No. 95–316. GRENELL *v.* NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 767.

No. 95–318. AURA SYSTEMS, INC., ET AL. *v.* FRANKSTON. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 333.

No. 95–320. REYNOLDS ET AL. *v.* WAGNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 55 F. 3d 1426.

No. 95–327. SILVER ROSE ENTERTAINMENT, INC., ET AL. *v.* CLAY COUNTY ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 646 So. 2d 246.

No. 95–330. CUNNINGHAM *v.* WHITTIER UNION HIGH SCHOOL DISTRICT ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–333. JULIEN *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 55 F. 3d 632.

No. 95–336. PENNSYLVANIA TURNPIKE COMMISSION ET AL. *v.* CHRISTY. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 1140.

No. 95–337. RICE *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 166 Ill. 2d 35, 651 N. E. 2d 1083.

No. 95–341. TRIGALET ET AL., AS PERSONAL REPRESENTATIVES OF THE ESTATE OF TRIGALET *v.* WARRICK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 54 F. 3d 645.

No. 95–342. THOMPSON ET AL. *v.* CITY OF SAN JOSE. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 32 Cal. App. 4th 330, 38 Cal. Rptr. 2d 205.

No. 95–343. BULLIS *v.* FROEHLICH ET AL. Ct. App. Ariz. Certiorari denied.

No. 95–344. BURR *v.* O'BOYNIK ET AL. Ct. App. Kan. Certiorari denied. Reported below: 20 Kan. App. 2d xiii.

No. 95–417. VENCIUS ET UX. *v.* MORANIA OIL TANKER CORP. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 210 App. Div. 2d 219, 619 N. Y. S. 2d 336.

No. 95–437. THOMAS ET AL. *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 332.

No. 95–441. PUENTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1567.

No. 95–461. MASSARO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 1063.

No. 95–5569. SAENZ *v.* DIESSLIN, REGIONAL DIRECTOR, COLORADO CORRECTIONAL SERVICES, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 916.

No. 95–5587. STOW *v.* MARSHALL, SUPERINTENDENT, NORTH CENTRAL CORRECTIONAL INSTITUTION, ET AL. App. Ct. Mass. Certiorari denied. Reported below: 38 Mass. App. 1110, 646 N. E. 2d 437.

No. 95–5603. VAN LEE *v.* MAYER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–5605. BRANNSON *v.* ELY, JUDGE, CIRCUIT COURT OF MISSOURI, JACKSON COUNTY, ET AL. C. A. 8th Cir. Certiorari denied.

No. 95–5606. MACGUIRE *v.* RICH. C. A. 6th Cir. Certiorari denied.

No. 95–5615. SCOTT *v.* ROGERS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–5617. TAYLOR *v.* LECUREUX, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 54 F. 3d 777.

No. 95–5623. WOOLDRIDGE *v.* YARBROUGH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 339.

No. 95–5625. SHIEH *v.* EBERSHOFF ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–5627. SOLIMINE *v.* ORTHO MCNEIL PHARMACEUTICAL ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 56 F. 3d 59.

No. 95–5628. OSLUND *v.* THOMPSON, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 73.

No. 95–5643. JOHNSON *v.* CODY, WARDEN. Ct. Crim. App. Okla. Certiorari denied.

No. 95–5646. MORAN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 653 So. 2d 592.

No. 95–5647. BAKER *v.* FEDERAL LAND BANK OF SPOKANE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1138.

No. 95–5651. SHEFFIELD *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 95–5655. ROGERS *v.* KOLESAR ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5656. SWEENEY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1531.

No. 95–5659. KNIGHT *v.* INTERMARINE, U. S. A. C. A. 11th Cir. Certiorari denied. Reported below: 47 F. 3d 431.

No. 95–5663. MURPHY *v.* CANNON. Ct. App. Kan. Certiorari denied. Reported below: 20 Kan. App. 2d xiii, 889 P. 2d 1162.

No. 95–5667. MANGRUM *v.* HOLLOWAY. C. A. 11th Cir. Certiorari denied.

No. 95–5668. DEUTSCH *v.* EASTERBROOK ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5678. DEDES *v.* PAGE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 46 F. 3d 1123.

No. 95–5692. WESTON *v.* FIRST INTERSTATE BANK OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1149.

No. 95–5712. BOULTON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–5722. ADAMS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1286.

No. 95–5737. COUSINS *v.* NORTH CAROLINA DEPARTMENT OF CORRECTION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 320.

No. 95–5772. CHIA *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–5788. ATTWOOD *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 95–5799. FRANCHI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 313.

No. 95–5856. TURNER *v.* UNITED STATES;
No. 95–5917. WILWRIGHT *v.* UNITED STATES; and
No. 95–5959. DUSKIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 586.

No. 95–5858. HOYTE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 1239.

No. 95–5885. CARRIERE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1245.

No. 95–5914. ROUTT *v.* UNITED STATES; and
No. 95–5920. SHEPHARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1240.

No. 95–5937. OGUNDEKO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 75.

No. 95–5938. HAYMOND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1078.

No. 95–5942. PRINCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1071.

No. 95–5946. PAYNE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 171.

No. 95–5948. WALTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1067.

No. 95–5952. BARRIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 55 F. 3d 633.

No. 95–5953. MINOR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 647 A. 2d 770.

No. 95–5960. SMITH *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 95–5961. ESQUEDA-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 578.

No. 95–5962. PAGAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 637.

No. 95–5964. SOBIN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1423.

No. 95–5965. CASTRO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 56 F. 3d 78.

No. 95–5966. BUNTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 774.

No. 95–5968. LIPSCOMB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1070.

No. 95–5970. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 58 F. 3d 356.

No. 95–5971. WOOSLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1072.

No. 95–5976. DEMAURO *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied.

No. 95–5978. FEMIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 57 F. 3d 43.

No. 95–5981. GUNN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1067.

No. 95–5983. GARVIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 57 F. 3d 1081.

No. 95–5992. WENGER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 58 F. 3d 280.

No. 95–5995. CRUM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1071.

No. 95–5998. KINNEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 171.

No. 95–6001. BAUGH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1247.

No. 95–6002. AREVALO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1246.

No. 95–6003. BERNARDO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 812.

No. 95–6005. CHOW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 660.

No. 95–6007. MARINO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1246.

No. 95–6009. LYONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1198.

No. 95–6010. MARTIN *v.* HALL, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–6026. GEORGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 1078.

No. 95–6029. ESTRADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 392.

No. 95–6034. BONAVOLANTE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1452.

No. 95–6035. CROWDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 825.

No. 95–69. KERNAN, WARDEN *v.* WESTON. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 50 F. 3d 633.

No. 95–134. SOUTHERN PACIFIC TRANSPORTATION CO. *v.* ISBELL ET AL. Sup. Ct. Ariz. Motion of Association of American Railroads for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 181 Ariz. 316, 890 P. 2d 611, and 182 Ariz. 134, 893 P. 2d 1297.

No. 95–163. ZONING BOARD OF ADJUSTMENT FOR THE TOWNSHIP OF WEST AMWELL ET AL. *v.* DEBLASIO. C. A. 3d Cir. Motion of New Jersey State League of Municipalities for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 53 F. 3d 592.

No. 95–258. JONES, CHAIRMAN, BOARD OF VISITORS OF THE CITADEL, ET AL. *v.* FAULKNER ET AL. C. A. 4th Cir. Motion of Nancy Mellette to add party or to intervene denied. Certiorari denied. Reported below: 51 F. 3d 440.

No. 95–415. ATLANTIC MUTUAL INSURANCE CO. ET AL. *v.* COLUMBUS-AMERICA DISCOVERY GROUP, INC. C. A. 4th Cir. Motion of respondent to seal appendix granted. Certiorari denied. Reported below: 56 F. 3d 556.

OCTOBER 19, 1995

Miscellaneous Orders

No. A–340. HELLUMS *v.* ALABAMA ET AL. D. C. S. D. Ala. Application for stay, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. The temporary stay entered October 14, 1995, is vacated.

No. A–355. DAVIDSON, AS NEXT FRIEND OF DAVIDSON *v.* NETHERLAND, WARDEN. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. JUSTICE STEVENS would grant the application for stay of execution.

OCTOBER 30, 1995

Certiorari Granted—Vacated and Remanded. (See No. 95–6016, *ante*, p. 10.)

Miscellaneous Orders

No. A–132 (95–226). HAVERSAT *v.* UNITED STATES. C. A. 8th Cir. Application for stay, addressed to JUSTICE BREYER and referred to the Court, denied.

No. A–368. FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* RADIOFONE, INC. Motion of respondent to vacate the October 25, 1995 [*post*, p. 1301], order granting the application to vacate the stay entered by the United States Court of Appeals for the Sixth Circuit denied.

No. D–1317. IN RE DISBARMENT OF CASALINO. Disbarment entered. [For earlier order herein, see 510 U. S. 930.]

No. D–1558. IN RE DISBARMENT OF ROSENGARDEN. Disbarment entered. [For earlier order herein, see 515 U. S. 1140.]

No. D–1574. IN RE DISBARMENT OF MUHAMMAD. Disbarment entered. [For earlier order herein, see 515 U. S. 1176.]

No. D–1575. IN RE DISBARMENT OF ROSENBLUM. Disbarment entered. [For earlier order herein, see 515 U. S. 1176.]

No. D–1577. IN RE DISBARMENT OF ORTMAN. Disbarment entered. [For earlier order herein, see 515 U. S. 1176.]

No. D–1578. IN RE DISBARMENT OF THROWER. Disbarment entered. [For earlier order herein, see 515 U. S. 1177.]

No. D–1580. IN RE DISBARMENT OF EWERS. Disbarment entered. [For earlier order herein, see 515 U. S. 1177.]

No. D–1581. IN RE DISBARMENT OF CRAWFORD. Disbarment entered. [For earlier order herein, see 515 U. S. 1177.]

No. D–1582. IN RE DISBARMENT OF KELLNER. Disbarment entered. [For earlier order herein, see 515 U. S. 1177.]

No. D–1583. IN RE DISBARMENT OF TACHE. Disbarment entered. [For earlier order herein, see 515 U. S. 1177.]

No. D–1584. IN RE DISBARMENT OF FELMAN. Disbarment entered. [For earlier order herein, see 515 U. S. 1177.]

No. D–1589. IN RE DISBARMENT OF MIONE. Carl Nicholas Mione, of Brooklyn, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1591. IN RE DISBARMENT OF ZOCCOLA. Robert F. Zoccola, of Carmel, Ind., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1592. IN RE DISBARMENT OF BOUGHTON. Robert Willard Boughton, of Cleveland, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40

days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1593. IN RE DISBARMENT OF MCLENITHAN. Richard E. McLenithan, of Hudson Falls, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1594. IN RE DISBARMENT OF EBERHART. David Cleon Eberhart III, of Spring Hill, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1595. IN RE DISBARMENT OF EDELMAN. Irving Edelman, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1596. IN RE DISBARMENT OF GREENBERG. Alan Graham Greenberg, of Minnetonka, Minn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1597. IN RE DISBARMENT OF WOLLMAN. John Henry Wollman, of West Chester, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1598. IN RE DISBARMENT OF SIGNORE. Stephen Romer Signore, Jr., of Ambler, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1599. IN RE DISBARMENT OF WEISGERBER. Robert Glenn Weisgerber, of Black Mountain, N. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1600. IN RE DISBARMENT OF INGLIS. Charles K. Inglis, of St. Petersburg, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1601. IN RE DISBARMENT OF BUSTAMANTE. John H. Bustamante, of Lakewood, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–17. MAHAFFEY *v.* ILLINOIS. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. M–18. DEMILO & CO., INC. *v.* CONNECTICUT DEPARTMENT OF TRANSPORTATION. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 95–5831. GUESS *v.* GERKEN, JUDGE, COURT OF COMMON PLEAS, HOCKING COUNTY, OHIO. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until November 20, 1995, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 95–406. IN RE DANKO. C. A. Fed. Cir. Petition for writ of common-law certiorari denied. Reported below: 56 F. 3d 80.

No. 95–5747. IN RE SPRADLEY. C. A. 11th Cir. Petition for writ of common-law certiorari denied.

No. 95–6203. IN RE BONTY;
No. 95–6204. IN RE BONTA;
No. 95–6223. IN RE CAVAN;
No. 95–6230. IN RE RODRIGUEZ;
No. 95–6235. IN RE MONCRIEF;
No. 95–6236. IN RE LANZON;
No. 95–6237. IN RE JORY;
No. 95–6243. IN RE DEERE;
No. 95–6244. IN RE HARRIS;
No. 95–6245. IN RE GRASMICK;

No. 95–6257. IN RE WALKER;
No. 95–6258. IN RE WESLEY;
No. 95–6300. IN RE WHEELER;
No. 95–6301. IN RE SON VAN HOANG;
No. 95–6303. IN RE SHEPHERD;
No. 95–6305. IN RE LANE; and
No. 95–6306. IN RE MAIDA. Petitions for writs of habeas corpus denied.

No. 95–5829. IN RE BROWN; and
No. 95–5833. IN RE SMITH. Petitions for writs of mandamus denied.

Certiorari Granted

No. 95–157. UNITED STATES *v.* ARMSTRONG ET AL. C. A. 9th Cir. Motions of respondents Robert Rozelle, Shelton Auntwan Martin, and Aaron Hampton for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 48 F. 3d 1508.

Certiorari Denied. (See also Nos. 95–406 and 95–5747, *supra.*)

No. 94–2068. PARKERSON *v.* BROOKS ET VIR. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 189, 454 S. E. 2d 769.

No. 94–2134. PETERSON *v.* AMERICAN LIFE & HEALTH INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 404.

No. 94–9693. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 49 F. 3d 1162.

No. 94–9720. MOBLEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 292, 455 S. E. 2d 61.

No. 94–9854. BAKER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 540 Pa. 131, 656 A. 2d 116.

No. 95–1. MARTINEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 899 S. W. 2d 655.

No. 95–133. MEARS ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS LIQUIDATING AGENT/RECEIVER OF OLYMPIC INTERNATIONAL BANK & TRUST CO. App. Ct. Mass. Certiorari denied. Reported below: 38 Mass. App. 1111, 646 N. E. 2d 1097.

No. 95–151. KLAMATH TRIBE *v.* OREGON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 44 F. 3d 758.

No. 95–334. VILLAGE OF NEW LEBANON ET AL. *v.* BUNCH, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF BRAVARD. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1069.

No. 95–335. NATIONAL ENGINEERING & CONTRACTING CO., INC., ET AL. *v.* REICH, SECRETARY OF LABOR. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1531.

No. 95–350. WUNDERLICH *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 266 Ill. App. 3d 1136, 684 N. E. 2d 464.

No. 95–351. KNOX COUNTY BOARD OF EDUCATION *v.* RYNES, BY HIS PARENT AND NEXT FRIEND, RYNES, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 65 F. 3d 169.

No. 95–352. HOLIDAY INNS, INC. *v.* MCNEELY. C. A. 6th Cir. Certiorari denied. Reported below: 49 F. 3d 189.

No. 95–356. WOOTEN *v.* CAMPBELL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 49 F. 3d 696.

No. 95–357. HOUSTON *v.* ALL SAINTS HEALTH SYSTEM, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1281.

No. 95–362. ROMBERG ET UX. *v.* NICHOLS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 453.

No. 95–363. CORRIGAN ET AL. *v.* CITY OF NEWAYGO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 55 F. 3d 1211.

No. 95–367. KELES *v.* NEW YORK UNIVERSITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 766.

No. 95–369. ROSENBAUM *v.* ROSENBAUM. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 268 Ill. App. 3d 1116, 685 N. E. 2d 29.

No. 95–379. NEWKIRK, BY NEXT FRIENDS, NEWKIRK AND NEWKIRK, ET AL. *v.* FINK, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COUNSELOR OF EAST LANSING PUBLIC SCHOOLS. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1070.

No. 95–392. GARFIELD ET AL. *v.* J. C. NICHOLS REAL ESTATE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 57 F. 3d 662.

No. 95–395. CLAPP *v.* LEBOEUF, LAMB, LEIBY & MACRAE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 765.

No. 95–396. JIMINEZ *v.* MARY WASHINGTON COLLEGE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 369.

No. 95–399. TREECE *v.* FLORIDA PAROLE COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1247.

No. 95–402. G. K. A. BEVERAGE CORP. ET AL. *v.* HONICKMAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 55 F. 3d 762.

No. 95–403. SOUTHWEST MARINE, INC. *v.* GIZONI; and SOUTHWEST MARINE, INC. *v.* GIZONI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 1138 (first judgment) and 71 (second judgment).

No. 95–404. SEBULSKY *v.* RICHARDSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1145.

No. 95–405. CARROLL ET AL. *v.* LORSON ET AL. C. A. D. C. Cir. Certiorari denied.

No. 95–407. MARTEL *v.* COUNTY OF LOS ANGELES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 993.

No. 95–408. MANSOUR *v.* GOLDSTOCK ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 185 App. Div. 2d 671, 587 N. Y. S. 2d 880.

No. 95–411. FLINN *v.* AMERICAN HOME ASSURANCE CO. ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–413. ALABAMA *v.* TUCKER. Sup. Ct. Ala. Certiorari denied. Reported below: 667 So. 2d 1339.

No. 95–444. ASKIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 47 F. 3d 100.

No. 95–451. SCHULZ ET AL. *v.* NEW YORK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 86 N. Y. 2d 225, 654 N. E. 2d 1226.

No. 95–462. MENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1285.

No. 95–483. BUCHBINDER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 95–494. ZAHRAN ET UX. *v.* FRANKENMUTH MUTUAL INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 53 F. 3d 334.

No. 95–498. PARKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 638.

No. 95–500. BARBER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 62.

No. 95–517. TOURON *v.* METROPOLITAN DADE COUNTY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 47 F. 3d 430.

No. 95–532. ZUNO-ARCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 44 F. 3d 1420.

No. 95–547. STILLO ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 57 F. 3d 553.

No. 95–557. BURTON *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 772.

No. 95–5260. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 49 F. 3d 406.

No. 95–5276. BASS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–5280. BONA *v.* GNAC, CORP. C. A. 3d Cir. Certiorari denied.

No. 95–5307. SACK *v.* RUBIN, SECRETARY OF THE TREASURY. C. A. 1st Cir. Certiorari denied. Reported below: 51 F. 3d 264.

No. 95–5315. SHEPARD ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 50 F. 3d 9.

No. 95–5352. GASTER *v.* PARROTT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 266.

No. 95–5361. DOWDY ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 43 F. 3d 388.

No. 95–5391. WILLINGHAM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 897 S. W. 2d 351.

No. 95–5467. PORTERFIELD *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 897 S. W. 2d 672.

No. 95–5541. BAXTER *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 45 F. 3d 1501.

No. 95–5650. RODRIGUEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 899 S. W. 2d 658.

No. 95–5680. JACKSON *v.* CIRCUIT COURT OF MICHIGAN, INGHAM COUNTY. Ct. App. Mich. Certiorari denied.

No. 95–5681. SCARBROUGH *v.* CITY OF PRICHARD, ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–5688. BRYANT *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–5700. PANARO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 213 App. Div. 2d 1036, 624 N. Y. S. 2d 497.

No. 95–5702. DUTCHER *v.* SWEENEY. Sup. Ct. Nev. Certiorari denied. Reported below: 110 Nev. 1538, 893 P. 2d 400.

No. 95–5709. MURPHY *v.* JUSTUS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 275.

No. 95–5710. LONEWOLF *v.* ORANGE COUNTY SOCIAL SERVICES ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–5717. ROWE *v.* CROSBY, SUPERINTENDENT, NEW RIVER CORRECTIONAL INSTITUTION, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–5723. VICKSON *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–5725. WASHINGTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 653 So. 2d 362.

No. 95–5729. CHARLESTON *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 1064.

No. 95–5733. SANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 95–5735. RIGGINS *v.* WALTER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 53 F. 3d 333.

No. 95–5745. ROMO ET AL. *v.* CHAMPION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 46 F. 3d 1013.

No. 95–5746. SPENCER *v.* HOWARD ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–5749. WASHINGTON *v.* ARIZONA. Super. Ct. Ariz., Yuma County. Certiorari denied.

No. 95–5754. DELOACH *v.* GARNER, CHAIRMAN, GEORGIA BOARD OF PARDONS AND PAROLES, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 679.

No. 95–5755. GRAHAM *v.* HUEBNER. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 337.

No. 95–5756. HENDERSON *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 266.

No. 95–5757. LEWIS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 165 Ill. 2d 305, 651 N. E. 2d 72.

No. 95–5759. KOSTOVSKI ET UX. *v.* JOLEVSKI ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 95–5760. KOHL *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied. Reported below: 659 So. 2d 273.

No. 95–5762. LEWIS *v.* NORTH CAROLINA EMPLOYMENT SECURITY COMMISSION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 773.

No. 95–5764. KALICZYNSKI *v.* RESOLUTION TRUST CORPORATION ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5765. KALICZYNSKI *v.* RESOLUTION TRUST CORPORATION ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 95–5768. WILLIAMS *v.* WARD, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 343.

No. 95–5769. WILLIAMS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 394.

No. 95–5770. VILLERS *v.* DUTTON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 54 F. 3d 777.

No. 95–5771. ADAMS *v.* WARE ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 901 S. W. 2d 269.

No. 95–5775. JONES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 95–5777. JASON *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 1385.

No. 95–5778. JONES *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 329.

No. 95–5779. KOONCE *v.* CASPARI, SUPERINTENDENT, EASTERN MISSOURI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 95–5780. MCADAMS *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 95–5781. MANGRUM *v.* BLEDSOE. C. A. 11th Cir. Certiorari denied.

No. 95–5782. MCCULLAR *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 635.

No. 95–5783. JENKINS *v.* JENKINS. Ct. App. Utah. Certiorari denied.

No. 95–5784. ATTWOOD *v.* CHILES, GOVERNOR OF FLORIDA, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 657 So. 2d 1167.

No. 95–5785. CURTIS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 30 Cal. App. 4th 1337, 37 Cal. Rptr. 2d 304.

No. 95–5786. MACON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 95–5787. ORZECHOWSKI *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 95–5792. CURRY *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 261 Ill. App. 3d 1132, 682 N. E. 2d 1266.

No. 95–5794. BURCHILL *v.* STEINBERG. Super. Ct. Pa. Certiorari denied. Reported below: 441 Pa. Super. 664, 657 A. 2d 46.

No. 95–5795. HERNANDEZ *v.* FLORIDA POWER & LIGHT CO. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1390.

No. 95–5796. GRAHAM *v.* HANNIGAN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 342.

No. 95–5803. FORMAN *v.* COOMBE, ACTING COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 812.

No. 95–5805. EVANS *v.* CLARKE, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Certiorari denied. Reported below: 52 F. 3d 330.

No. 95–5806. HOMO ET AL. *v.* CITY OF HENNIKER, NEW HAMPSHIRE. Super. Ct. N. H., Merrimack County. Certiorari denied.

No. 95–5809. MOORE *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 311.

No. 95–5810. JONES *v.* HUMPHREY, ATTORNEY GENERAL OF MINNESOTA (two judgments). C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 330 (first judgment).

No. 95–5821. SMITH *v.* GRAY ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–5823. TAMAYO *v.* DEPARTMENT OF LABOR ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1228.

No. 95–5825. COLEMAN *v.* VACCO, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–5826. CLAY *v.* GODINEZ, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–5828. JONES *v.* CITY OF JENNINGS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 329.

No. 95–5832. FREEMAN *v.* IDAHO. C. A. 9th Cir. Certiorari denied.

No. 95–5837. MURPH *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 118 N. C. App. 176, 455 S. E. 2d 169.

No. 95–5840. WILLIAMS *v.* GODINEZ, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 87 F. 3d 1316.

No. 95–5864. FRANKLIN *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 95–5879. TAYAG *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 57 F. 3d 1085.

No. 95–5888. ARNOLD *v.* RAY'S ADVERTISING SPECIALTIES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 28 F. 3d 115.

No. 95–5896. NIXON *v.* WEST VIRGINIA. Cir. Ct. Brooke County, W. Va. Certiorari denied.

No. 95–5902. BOYD *v.* WEST, CLERK, DISTRICT COURT OF TEXAS, KNOX COUNTY. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 397.

No. 95–5915. PAUL *v.* THOMAS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 57 F. 3d 1081.

No. 95–5989. PARKER *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1241.

No. 95–5997. HYUNG SU LEE *v.* UNITED STATES; and
No. 95–6082. GUN HO KIM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 176.

No. 95–6004. BLYTHE *v.* UNITED STATES;
No. 95–6017. PARKS *v.* UNITED STATES;
No. 95–6019. PEART *v.* UNITED STATES; and

No. 95–6020. PEART *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: No. 95–6004, 57 F. 3d 1064.

No. 95–6021. PHILYOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1246.

No. 95–6022. RODAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 393.

No. 95–6024. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 52 F. 3d 331.

No. 95–6027. GOLDEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 59 F. 3d 179.

No. 95–6042. SINGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 1033.

No. 95–6043. BRUNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 54 F. 3d 673.

No. 95–6067. DOE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 95–6069. HERBERT ET VIR *v.* HENNEBERRY, DIRECTOR, PATUXENT INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 166.

No. 95–6071. GREER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 897.

No. 95–6075. PARKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 647.

No. 95–6076. SHACKELFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 636.

No. 95–6083. RIVEROS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1246.

No. 95–6084. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 168.

No. 95–6091. TURNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 897.

No. 95–6094. DOMINGUEZ, AKA VALLEPEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1246.

No. 95–6095. MCCLAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–6100. JERNIGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 74.

No. 95–6102. KOUBA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 1224.

No. 95–6105. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 61 F. 3d 904.

No. 95–6107. COSKY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 913.

No. 95–6108. BEAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 340.

No. 95–6109. GILBERT *v.* SPEARS, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 636.

No. 95–6110. LEWIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 56 F. 3d 69.

No. 95–6113. KIDSTON *v.* STIBBARDS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 1063.

No. 95–6116. CARRAFA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 176.

No. 95–6119. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 391.

No. 95–6120. PEREZ-GARCIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 56 F. 3d 1.

No. 95–6121. ORIAKHI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1290.

No. 95–6122. SAHHAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 1026.

No. 95–6124. MCPHERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 744.

No. 95–6125. BURTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 812.

No. 95–6126. BUSTOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 912.

No. 95–6128. THOMPSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 60 F. 3d 829.

No. 95–6133. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1070.

No. 95–6136. MCMILLAN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 660.

No. 95–6137. BRIEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 59 F. 3d 274.

No. 95–6138. HOLMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 640.

No. 95–6142. KENNEDY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1137.

No. 95–6143. MARES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 60 F. 3d 837.

No. 95–6144. BURCHARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 60 F. 3d 829.

No. 95–6147. GASTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1247.

No. 95–6148. GESMUNDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 47 F. 3d 1176.

No. 95–6150. GIBBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 394.

No. 95–6151. GEORGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 176.

No. 95–6152. FRANCO-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 340.

No. 95–6161. BRAZIEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 635.

No. 95–6163. ST. MARTIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1246.

No. 95–6165. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 660.

No. 95–6170. CZEKALA *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 168.

No. 95–6173. TATUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 168.

No. 95–6175. CULLUM *v.* UNITED STATES (two judgments). C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 393.

No. 95–6176. ABRIL-PERALTA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 59 F. 3d 179.

No. 95–6179. TOBIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 95–6182. DINOVO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 57 F. 3d 1061.

No. 95–6183. DIXON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 168.

No. 95–6184. FERGUSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 400.

No. 95–6186. BROCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 154.

No. 95–6187. DIAZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 48 F. 3d 1217.

No. 95–6188. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1357.

No. 95–6190. PITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 661.

No. 95–6191. COFFEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 249.

No. 95–6192. BUYS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 340.

No. 95–6193. ALLISON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 63 F. 3d 350.

No. 95–6194. SHARK *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 51 F. 3d 1072.

No. 95–6196. JOELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 835.

No. 95–6197. LETTERLOUGH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 F. 3d 332.

No. 95–6212. GRIEGO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 393.

No. 95–6213. CROSS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 57 F. 3d 588.

No. 95–6214. CRONN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 393.

No. 95–6218. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 177.

No. 95–6219. SHEPARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 177.

No. 95–6221. PINELLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 75.

No. 95–6222. SMALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 284.

No. 95–6233. WOINER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 164.

No. 95–6261. WONG *v.* CIBA-GEIGY CORP., RESEARCH DEPARTMENT. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 819.

No. 95–73. CARGILL, INC. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 55 F. 3d 1388.

JUSTICE THOMAS, dissenting.

This case questions whether the Army Corps of Engineers (Corps) can, under the Clean Water Act, constitutionally assert jurisdiction over private property based solely on the actual or

potential presence of migratory birds that cross state lines. I dissent from the denial of certiorari in this case.

Petitioner, the successor in interest to Leslie Salt Company, owns a 153-acre tract of land southeast of San Francisco. Across the highway is the San Francisco Bay National Wildlife Refuge, which was created when the United States condemned land previously owned by petitioner. In approximately 1919, the predecessor of Leslie Salt began manufacturing salt on the property. To facilitate salt production, Leslie Salt dug pits on dry ground to collect calcium chloride and dug shallow basins to crystallize salt. These basins lie on approximately 12.5 acres of the tract. Leslie Salt discontinued salt production in 1959.[1] Since then, the area has been dry most of the year, but, during the winter and spring, rainwater occasionally creates temporary ponds. In 1985, Leslie Salt began digging a feeder ditch and a siltation pond on its property and began discharging fill material that affected the basins. After learning of Leslie Salt's activities, the Corps issued a cease-and-desist order under the Clean Water Act, 86 Stat. 816, as amended, 33 U. S. C. § 1251 *et seq.* (1988 ed.). Leslie Salt filed suit challenging the Corps' jurisdiction over its property.

The United States District Court for the Northern District of California originally found that the Corps lacked jurisdiction over the land, but the Court of Appeals for the Ninth Circuit reversed and remanded for a determination whether the presence of migratory birds created a sufficient connection to interstate commerce to sustain Corps jurisdiction. *Leslie Salt Co.* v. *United States*, 896 F. 2d 354 (1990), cert. denied, 498 U. S. 1126 (1991). On remand, the District Court held that the presence of migratory birds on the property did create a sufficient connection to interstate commerce to permit Corps regulation, and the Court of Appeals affirmed. *Leslie Salt Co.* v. *United States*, 55 F. 3d 1388 (CA9 1995). Petitioner seeks review of this ruling. I would grant certiorari to resolve whether the potential or occasional

[1] After 1959, the crystallizing basins remained generally void of vegetation due to the compaction and high salinity of the soil. The dry and barren condition of the basins created a dust problem, and, as a result, Leslie Salt was cited for air pollution violations. To prevent further citations, Leslie Salt subsequently plowed the basins in 1983 and 1985 to loosen the soil and create conditions more hospitable to plant growth. Ironically, Leslie Salt's actions to avoid citation for air pollution helped create the conditions that later subjected it to penalties under the Clean Water Act.

existence of migratory birds on petitioner's property creates a sufficient nexus with interstate commerce to permit Corps regulation of these lands.

The Clean Water Act prohibits the discharge of any "pollutant"—including dredged or fill materials—into "navigable waters" without a permit from the Corps. 33 U. S. C. §§ 1311(a), 1344(a), 1362(12). "Navigable waters" are defined in the Clean Water Act as "waters of the United States." § 1362(7). The Clean Water Act does not further define the waters to which Corps jurisdiction extends. Instead, the Corps has promulgated regulations defining the "waters of the United States" as:

> "(1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
>
> . . . . .
>
> "(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce . . . ." 33 CFR § 328.3(a) (1995).

In the preamble to regulations promulgated in 1986, the Corps further suggested that "waters of the United States" includes waters:

> "a. Which are or would be used as habitat by birds protected by Migratory Bird Treaties; or
>
> "b. Which are or would be used as habitat by other migratory birds which cross state lines . . . ." 51 Fed. Reg. 41217.[2]

Only last Term, we held that possession of a firearm in a local school zone does not substantially affect interstate commerce. *United States* v. *Lopez*, 514 U. S. 549 (1995). The basis asserted to create federal jurisdiction over petitioner's land in this case

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[2] These regulations presumptively exclude "settling basins" from the Corps' definition of "waters of the United States." 51 Fed. Reg. 41217 (1986). I find it strange that Leslie Salt could have filled in its settling ponds without Corps regulation if it had still been using them in salt production, but cannot now that it has abandoned the production of salt.

seems to me to be even more farfetched than that offered, and rejected, in *Lopez*. At least in *Lopez* the Government could assert that the presence of weapons in and around schools may result in violent crime that affects education and, hence, the economy. See *id.*, at 563–564. In this case, the Corps' basis for jurisdiction rests entirely on the actual or potential presence of migratory birds on petitioner's land. In light of *Lopez*, I have serious doubts about the propriety of the Corps' assertion of jurisdiction over petitioner's land in this case.

It is undisputed that the occasional rainwater ponds at issue in this case have never been, are not now, and probably will never be susceptible to use in interstate or foreign commerce. The "other waters" provision of 33 CFR §328.3(a)(3) (1995) does not require that an activity substantially affect interstate commerce, only that the activity "*could* affect interstate or foreign commerce." (Emphasis added.) In keeping with the "could affect" test, the so-called "migratory bird rule" extends the Corps' regulatory jurisdiction over any waters that might serve as a potential habitat for "migratory birds which cross state lines." 51 Fed. Reg. 41217 (1986).

Apparently, the Corps' regulations are based on the assumption, improper in my opinion, that the self-propelled flight of birds across state lines creates a sufficient interstate nexus to justify the Corps' assertion of jurisdiction over any standing water that could serve as a habitat for migratory birds. As the Court of Appeals admitted, the Corps' expansive interpretation of its regulatory powers under the Clean Water Act may test the very "bounds of reason," 55 F. 3d, at 1396, and, in my mind, likely stretches Congress' Commerce Clause powers beyond the breaking point.

This case is not like *Andrus* v. *Allard*, 444 U. S. 51 (1979), relied on by the Government, which upheld a ban on the sale of bald or golden eagles or any part thereof. The eagle feathers at issue in *Allard* were actually items of interstate commerce, not simply airborne interstate travelers. *Id.*, at 54. Similarly misplaced is the Court of Appeals' reliance on *Hughes* v. *Oklahoma*, 441 U. S. 322 (1979), a case involving interstate transportation of minnows for commercial purposes.

Both the Court of Appeals and the Government rely on the Seventh Circuit's declaration of an interstate nexus in *Hoffman Homes, Inc.* v. *EPA*, 999 F. 2d 256, 261 (1993): "Throughout North

America, millions of people annually spend more than a billion dollars on hunting, trapping, and observing migratory birds." That is no doubt true, and I do not challenge Congress' power to preserve migratory birds and their habitat through legitimate means. However, that substantial interstate commerce depends on the continued existence of migratory birds does not give the Corps *carte blanche* authority to regulate every property that migratory birds use or could use as habitat. The point of *Lopez* was to explain that the activity on the land to be regulated must substantially affect interstate commerce before Congress can regulate it pursuant to its Commerce Clause power.

The record in this case demonstrates that migratory birds do visit petitioner's seasonal rainwater ponds. But there was no showing that humans ever went to petitioner's property to hunt, trap, or observe migratory birds. Indeed, as far as the record reveals, the only persons ever to visit petitioner's property in connection with migratory birds were the Government's experts. The record further suggests that the habitat itself was the product of industrial land use and that petitioner's attempts to remedy air pollution violations made the temporary ponds more hospitable to migratory birds. There was no indication that petitioner's activities would harm any birds or affect the wildlife refuge across the road.

Other than the occasional presence of migratory birds, there was no showing that petitioner's land use would have any effect on interstate commerce, much less a substantial effect. Nor was there any showing that the cumulative effect of land use involving seasonal standing water—water that is wholly isolated from any water used, or usable, in interstate commerce—would have a substantial effect on interstate commerce.

This case raises serious and important constitutional questions about the limits of federal land-use regulation in the name of the Clean Water Act that provide a compelling reason to grant certiorari in this case. These questions were left open in *United States* v. *Riverside Bayview Homes, Inc.*, 474 U. S. 121 (1985), and should now be resolved.

I respectfully dissent.

No. 95–368. SMITH ET AL. *v.* RUSH. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 56 F. 3d 918.

No. 95–410. SCHOONOVER *v.* WILD INJUN PRODUCTS ET AL. C. A. Fed. Cir. Motion of petitioner to consolidate or defer consideration of petition denied. Certiorari denied. Reported below: 56 F. 3d 80.

No. 95–5797. HORSLEY *v.* ALABAMA. C. A. 11th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the motion to defer consideration. Reported below: 45 F. 3d 1486.

Rehearing Denied

No. 94–1465. ROBERTS *v.* KINGS COUNTY HOSPITAL ET AL., 514 U. S. 1083;

No. 94–8354. ECKERT ET AL. *v.* ESTATE OF ECKERT, 514 U. S. 1099; and

No. 95–45. PIRKLE ET AL. *v.* OGONTZ CONTROLS CO. ET AL., *ante*, p. 863. Petitions for rehearing denied.

NOVEMBER 6, 1995

Miscellaneous Orders

No. A–371. LEMOND CONSTRUCTION CO. *v.* WHEELER. Application for stay of execution of judgment of the Supreme Court of Alabama, case No. 1930866, entered on September 29, 1995, presented to JUSTICE KENNEDY, and by him referred to the Court, granted pending the timely filing and disposition by this Court of a petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

No. A–377. OWENS-ILLINOIS CORP. *v.* REKDAHL ET AL. Application for stay of judgment, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted. Execution and enforcement of that portion of the judgment of the Court of Appeal of California, Second Appellate District, Division Three, case No. B068259, entered on May 25, 1995, and modified on June 20, 1995, awarding punitive damages against applicant Owens-Illinois Corp. is stayed pending the timely filing and disposition by this Court of a petition for writ of certiorari.

No. D–1585. IN RE DISBARMENT OF PALMISANO. Disbarment entered. [For earlier order herein, see 515 U. S. 1183.]

No. D–1602. IN RE DISBARMENT OF BRYANT. Thomas E. Bryant, Jr., of Mobile, Ala., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1603. IN RE DISBARMENT OF SHAPIRO. Phillip E. Shapiro, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1604. IN RE DISBARMENT OF CARSON. George Edward Carson, of Jackson, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1605. IN RE DISBARMENT OF EDELL. Norman Edell, of Los Angeles, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1606. IN RE DISBARMENT OF SMITH. Randall Eugene Smith, of Bradenton, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1607. IN RE DISBARMENT OF MORRISON. Charles T. Morrison, Jr., of Los Angeles, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1608. IN RE DISBARMENT OF HEATH. Steven E. Heath, of Bradley Beach, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1609. IN RE DISBARMENT OF HENDRICKS. Carl C. Hendricks, Jr., of Beaufort, S. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1610. IN RE DISBARMENT OF PHILLIPS. S. Patrick Phillips, of Bossier City, La., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–19. BREWER *v.* WARD, WARDEN. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied. JUSTICE STEVENS, JUSTICE KENNEDY, JUSTICE GINSBURG, and JUSTICE BREYER would grant the motion.

No. M–20. KENDALL *v.* CITY OF TACOMA. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. 94–896. BMW OF NORTH AMERICA, INC. *v.* GORE. Sup. Ct. Ala. [Certiorari granted, 513 U. S. 1125.] Motion of petitioner for leave to file a supplemental brief after argument granted. Motion of respondent for leave to file a supplemental brief after argument granted.

No. 94–923. SHAW ET AL. *v.* HUNT, GOVERNOR OF NORTH CAROLINA, ET AL.; and

No. 94–924. POPE ET AL. *v.* HUNT, GOVERNOR OF NORTH CAROLINA, ET AL. D. C. E. D. N. C. [Probable jurisdiction noted, 515 U. S. 1172.] Motion of appellants James Arthur Pope et al. for divided argument granted. Motion of appellees for divided argument granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae*, for divided argument, and for additional time for oral argument granted. The time is divided as follows: appellants Ruth Shaw et al., 30 minutes; appellants James Arthur Pope et al., 10 minutes; appellees James B. Hunt, Jr., et al., 20 minutes; appellees Ralph Gingles et al., 10 minutes; the Solicitor General, 10 minutes.

No. 94–1654. HEISER ET AL. *v.* UMBEHR. C. A. 10th Cir. [Certiorari granted, 515 U. S. 1172.] Motion of the Solicitor Gen-

eral for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 94-9088. NEAL *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, 515 U. S. 1141.] Motion for appointment of counsel granted, and it is ordered that Donald Thomas Bergerson, Esq., of San Francisco, Cal., be appointed to serve as counsel for petitioner in this case.

No. 95-5906. ATTWOOD *v.* SMITH ET AL. Sup. Ct. Fla.; and No. 95-5907. ATTWOOD *v.* PALM BEACH POST ET AL. Dist. Ct. App. Fla., 4th Dist. Motions of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until November 27, 1995, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 95-6392. IN RE CAMYN. Petition for writ of habeas corpus denied.

No. 95-5910. IN RE SACK. Petition for writ of mandamus denied.

No. 95-5905. IN RE O'LEARY. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 95-210. HOLLY FARMS CORP. ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 4th Cir. Certiorari granted limited to Question 5 presented by the petition. Reported below: 48 F. 3d 1360.

No. 95-5257. ORNELAS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 52 F. 3d 328.

No. 95-5661. MELENDEZ *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 55 F. 3d 130.

Certiorari Denied

No. 95-88. EDWARDS *v.* DEPARTMENT OF THE INTERIOR. C. A. 10th Cir. Certiorari denied. Reported below: 40 F. 3d 1152.

No. 95–193. JOLICOEUR FURNITURE CO., INC. *v.* BALDELLI ET AL. Sup. Ct. R. I. Certiorari denied. Reported below: 653 A. 2d 740.

No. 95–370. ATCHLEY *v.* SMITH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 56 F. 3d 77.

No. 95–372. SWANSON ET AL. *v.* FAULKNER, SECRETARY, NORTH CAROLINA DEPARTMENT OF REVENUE, ET AL.; and

No. 95–373. HOMESLEY ET AL. *v.* FAULKNER, SECRETARY, NORTH CAROLINA DEPARTMENT OF REVENUE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 55 F. 3d 956.

No. 95–387. LEWIS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 451, 457 S. E. 2d 173.

No. 95–391. WOOD ET AL. *v.* WASH ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 637.

No. 95–400. NUMMER *v.* MICHIGAN DEPARTMENT OF TREASURY. Sup. Ct. Mich. Certiorari denied. Reported below: 448 Mich. 534, 533 N. W. 2d 250.

No. 95–409. PROMETHEUS FUNDING CORP., FKA FRANK B. HALL & CO., INC., ET AL. *v.* MERCHANTS HOME DELIVERY SERVICES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 1486.

No. 95–412. SHAW *v.* HAHN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 1128.

No. 95–416. SEABOLT *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 95–421. MALEKZADEH *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 95–423. JOHNSON *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 95–429. BROWN, ADMINISTRATRIX OF THE ESTATE OF BROWN, DECEASED *v.* ODOM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 60.

No. 95–430. SIEMENS ENERGY & AUTOMATION, INC. *v.* STRAUSBERG, TRUSTEE, ALLIS-CHALMERS CORPORATION PROD-

UCT LIABILITY TRUST. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 765.

No. 95–432. AARON ET AL. *v.* CITY OF WICHITA, KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 54 F. 3d 652.

No. 95–440. HOPEWELL *v.* DUNKER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 56 F. 3d 68.

No. 95–502. SPICKLER *v.* YORK. Sup. Jud. Ct. Me. Certiorari denied.

No. 95–529. WATER DISTRICT NO. 1 OF JOHNSON COUNTY *v.* KOOPMAN; and

No. 95–5411. KOOPMAN *v.* WATER DISTRICT NO. 1 OF JOHNSON COUNTY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 41 F. 3d 1417.

No. 95–556. CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH ET AL. *v.* MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 659 A. 2d 227.

No. 95–5450. LUCKETT *v.* RENT-A-CENTER, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 53 F. 3d 871.

No. 95–5633. HILDWIN *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 654 So. 2d 107.

No. 95–5642. JACKSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 95–5804. FELDER *v.* MONTAGUE, CLERK, UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 773.

No. 95–5847. SIGMAN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 95–5851. YURTIS *v.* PHIPPS. Ct. App. Wash. Certiorari denied.

No. 95–5865. EAGLIN *v.* WELBORN, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 57 F. 3d 496.

No. 95–5868. KNUCKLES *v.* OHIO. Ct. App. Ohio, Butler County. Certiorari denied.

No. 95–5869. MONROE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 651 So. 2d 679.

No. 95–5874. NIXON *v.* SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 167.

No. 95–5875. LEE *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 95–5882. HAMBRICK *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 95–5883. HULL *v.* SIMS. Sup. Ct. Ga. Certiorari denied.

No. 95–5884. BELL *v.* DeTELLA, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 57 F. 3d 1073.

No. 95–5887. WALLACE *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1067.

No. 95–5889. BALLARD *v.* HOLLAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–5891. BROWN *v.* MAZZOLA ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5892. WEETS *v.* MATLOCK. Sup. Ct. Iowa. Certiorari denied. Reported below: 531 N. W. 2d 118.

No. 95–5893. VEY *v.* CASTOR, CHAIRMAN, PENNSYLVANIA BOARD OF PROBATION AND PAROLE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–5898. SPIGELSKI *v.* BANASZAK. C. A. 3d Cir. Certiorari denied. Reported below: 26 F. 3d 123.

No. 95–5903. DAVIS *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 636.

No. 95–5908. ROBERTS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 654 So. 2d 1168.

No. 95–5909. SHACKLEFORD *v.* DECKER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–5916. BRADY ET AL. *v.* BRADY. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–5928. JACOB *v.* PACIFIC BELL DIRECTORY. C. A. 9th Cir. Certiorari denied.

No. 95–5933. KENT *v.* REICH, SECRETARY OF LABOR. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1247.

No. 95–5935. AUSTIN *v.* UPSHAW. Sup. Ct. Ala. Certiorari denied.

No. 95–5939. DAGGETT *v.* KREBS ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–5940. MORRIS *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 66 F. 3d 344.

No. 95–5941. LOWERY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 654 So. 2d 1173.

No. 95–5947. VALDEZ *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 900 P. 2d 363.

No. 95–5951. COLONEL *v.* DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 658 So. 2d 989.

No. 95–5986. REEMSNYDER *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–6025. SPRUILL *v.* MOZELL. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 167.

No. 95–6033. HICKS *v.* COLLINS, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 1386.

No. 95–6078. BENTLEY *v.* ARTUZ, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 95–6103. TRAUNIG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 62 F. 3d 1413.

No. 95–6106. WARDEN ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1242.

No. 95–6114. RICHARDS *v.* WOODS, DIRECTOR OF CLASSIFICATION, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 320.

No. 95–6177. MURTON, AKA CUDJOE *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 395.

No. 95–6207. KNIGHT *v.* DEPARTMENT OF THE NAVY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 638.

No. 95–6215. BABCOCK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 61 F. 3d 908.

No. 95–6216. BARNES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 95–6220. CLARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 402.

No. 95–6227. CARLOW *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 64 F. 3d 654.

No. 95–6238. LUCERO *v.* RILEY, SECRETARY OF EDUCATION, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 338.

No. 95–6246. DICKEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1241.

No. 95–6248. HANKINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 897.

No. 95–6249. HOLMES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 171.

No. 95–6250. GALAVIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 320.

No. 95–6251. HEAVILIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 835.

No. 95–6252. DODGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 61 F. 3d 142.

No. 95–6269. CASTRO CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 176.

No. 95–6273. GRISWOLD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 57 F. 3d 291.

No. 95–6274. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 395.

No. 95–6275. KELLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 826.

No. 95–6276. LOVETT *v.* UNITED STATES; LOVETT *v.* UNITED STATES; and HEPBURN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 897.

No. 95–6277. METU, AKA CHUK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 95–6278. RAITPORT *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 312.

No. 95–6279. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 164.

No. 95–6281. RAULERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 534.

No. 95–6283. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 41.

No. 95–6286. D'ANTONI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 59 F. 3d 173.

No. 95–6287. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 826.

No. 95–6291. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1388.

No. 95–6294. GIL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 F. 3d 1414.

No. 95–6296. CHARLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 395.

No. 95–6297. BUCHANAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 914.

No. 95–6298. CINTRON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 65 F. 3d 170.

No. 95–6307. JONES *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 58 F. 3d 688.

No. 95–6308. LINN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 30.

No. 95–6310. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 664.

No. 95–6312. ROBERTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 F. 3d 1415.

No. 95–6316. STOVALL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 60 F. 3d 837.

No. 95–6317. REBROOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 58 F. 3d 961.

No. 95–6319. LINARES-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1426.

No. 95–6320. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 57 F. 3d 1012.

No. 95–6322. MOLINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 55 F. 3d 420 and 64 F. 3d 667.

No. 95–6323. FORD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 69 F. 3d 549.

No. 95–6325. FEDERICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 400.

No. 95–6326. HILL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 60 F. 3d 672.

No. 95–6328. CERULLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 69 F. 3d 548.

No. 95–6329. TORRES-DIAZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 60 F. 3d 445.

No. 95–6330. WASHINGTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 60 F. 3d 829.

No. 95–6331. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 61 F. 3d 908.

No. 95–6332. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 395.

No. 95–6333. WILLIAMS *v.* HENRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 95–6334. PERALTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1242.

No. 95–6339. MANLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1285.

No. 95–6345. DAVIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 74.

No. 95–6346. GILMORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 60 F. 3d 392.

No. 95–6357. WOODS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 917.

No. 95–209. JEFFERSON-PILOT LIFE INSURANCE CO., INC. *v.* WEEMS ET UX. Sup. Ct. Ala. Motion of Business Council of Alabama for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 663 So. 2d 905.

No. 95–453. LUTHER *v.* ETHICON, INC., ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 95–6272. GALLAHER *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 61 F. 3d 326.

Rehearing Denied

No. 94–9250. ROBERSON *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 828;

No. 94–9279. BOND *v.* O'DEA, WARDEN, *ante*, p. 829; and
No. 95–5202. GLANT *v.* LAMB ET AL., *ante*, p. 882. Petitions for rehearing denied.

NOVEMBER 8, 1995

Dismissal Under Rule 46

No. 94–1030. KANSAS *v.* KICKAPOO TRIBE, AKA KICKAPOO NATION IN KANSAS, OF THE KICKAPOO RESERVATION IN KANSAS, ET AL. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 37 F. 3d 1422.

NOVEMBER 9, 1995

Dismissal Under Rule 46

No. 95–213. CHAVES ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, LIQUIDATING AGENT/RECEIVER OF MALDEN TRUST CO. C. A. 10th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 47 F. 3d 1178.

Certiorari Denied

No. 95–6495 (A–374). BARNES *v.* NETHERLAND, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 58 F. 3d 971.

NOVEMBER 13, 1995

Miscellaneous Orders

No. M–21. CLEMENTE *v.* UNITED STATES;
No. M–22. LIVECCHI *v.* XEROX CORP.; and
No. M–23. BEASLEY *v.* HAND ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 95–5139. LUNA *v.* SUTHERLAND ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 804] denied.

No. 95–6031. DESMOND *v.* NEW VALLEY CORP. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until December 4, 1995, within which to pay the docketing fee required

by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 95–6406. IN RE SMITH. Petition for writ of mandamus denied.

No. 95–6079. IN RE SMITH. Petition for writ of prohibition denied.

Certiorari Granted

No. 95–124. DENVER AREA EDUCATIONAL TELECOMMUNICATIONS CONSORTIUM, INC., ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 95–227. ALLIANCE FOR COMMUNITY MEDIA ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 56 F. 3d 105.

No. 95–354. O'CONNOR *v.* CONSOLIDATED COIN CATERERS CORP. C. A. 4th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 56 F. 3d 542.

Certiorari Denied

No. 94–1881. COLLINS *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 45 F. 3d 1569.

No. 94–2022. LOUISIANA *v.* SCHIRMER. Sup. Ct. La. Certiorari denied. Reported below: 646 So. 2d 890.

No. 94–8845. TABAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 39 F. 3d 1173.

No. 94–9729. CHERSIN ET AL. *v.* MACHINE TOOL FINANCE CORP. ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 651 So. 2d 689.

No. 95–25. ORD & NORMAN ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 203.

No. 95–60. BUSTAMANTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 45 F. 3d 933.

No. 95–86. DOOLIN SECURITY SAVINGS BANK, F. S. B. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 4th Cir. Certiorari denied. Reported below: 53 F. 3d 1395.

No. 95–152. DAVIS *v.* FANDINO ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 653 So. 2d 516.

No. 95–184. TOM SHAW, INC. *v.* WEST, SECRETARY OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 41 F. 3d 1520.

No. 95–214. DEANGELIS *v.* EL PASO MUNICIPAL POLICE OFFICERS ASSN.; and

No. 95–446. EL PASO MUNICIPAL POLICE OFFICERS ASSN. *v.* DEANGELIS. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 591.

No. 95–230. WALMER *v.* DEPARTMENT OF DEFENSE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 851.

No. 95–243. NORINSBERG CORP. *v.* DEPARTMENT OF AGRICULTURE. C. A. D. C. Cir. Certiorari denied. Reported below: 47 F. 3d 1224.

No. 95–248. FEDERAL HOUSING PARTNERS IV ET AL. *v.* CISNEROS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT. C. A. 8th Cir. Certiorari denied. Reported below: 55 F. 3d 362.

No. 95–250. PLAINVILLE READY MIX CONCRETE CO. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 44 F. 3d 1320.

No. 95–255. PLUMBERS AND PIPE FITTERS LOCAL UNION NO. 32 ET AL. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 50 F. 3d 29.

No. 95–375. CITY OF CHARLESTON ET AL. *v.* PUBLIC SERVICE COMMISSION OF WEST VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 385.

No. 95–380. ANDOLSEK *v.* CITY OF KIRTLAND ET AL. Ct. App. Ohio, Lake County. Certiorari denied. Reported below: 99 Ohio App. 3d 333, 650 N. E. 2d 911.

No. 95–383. LEVEY, BY THE PERSONAL REPRESENTATIVE OF HIS ESTATE, ET AL. *v.* STATE DEVELOPMENTAL CENTER, GRAFTON, NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 533 N. W. 2d 707.

No. 95–389. WALKER *v.* RUSSELL, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 472.

No. 95–401. KNOTT *v.* HOLTZMAN. Sup. Ct. Wis. Certiorari denied. Reported below: 193 Wis. 2d 649, 533 N. W. 2d 419.

No. 95–418. CANEZ *v.* LABORERS' INTERNATIONAL UNION OF NORTH AMERICA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 40 F. 3d 1246.

No. 95–419. TAYLOR *v.* GOODYEAR TIRE & RUBBER CO. C. A. 6th Cir. Certiorari denied. Reported below: 38 F. 3d 1216.

No. 95–427. COUNTY OF SAGINAW ET AL. *v.* WHALEY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 58 F. 3d 1111.

No. 95–435. BATTLE *v.* DUKE UNIVERSITY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 772.

No. 95–438. BERKSON *v.* SILVERMAN, CHIEF, NEW JERSEY BUREAU OF SECURITIES. Sup. Ct. N. J. Certiorari denied. Reported below: 141 N. J. 412, 661 A. 2d 1266.

No. 95–439. FLAHERTY ET UX. *v.* NATIONAL MARINE FISHERIES SERVICE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 811.

No. 95–443. BONAR *v.* (BONAR) MOSER. Cir. Ct. Tucker County, W. Va. Certiorari denied.

No. 95–445. ERNST & YOUNG *v.* RHODE ISLAND DEPOSITORS ECONOMIC PROTECTION CORPORATION ET AL. Sup. Ct. R. I. Certiorari denied. Reported below: 659 A. 2d 95.

No. 95–449. HOUSING AUTHORITY OF THE SAC AND FOX NATION *v.* LEWIS ET VIR. Sup. Ct. Okla. Certiorari denied. Reported below: 896 P. 2d 503.

No. 95–455. FRASER *v.* LINTAS: CAMPBELL-EWALD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 722.

No. 95–464. MANNA *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 51 F. 3d 1158.

No. 95–472. HASTINGS *v.* SMALL BUSINESS ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 59 F. 3d 182.

No. 95–473. McCULLOCH *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied. Reported below: 925 S. W. 2d 14.

No. 95–479. CRAWFORD *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–521. WATTS *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–522. ROY *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 57 F. 3d 1085.

No. 95–540. FEDERATION OF CONNECTICUT TAXPAYER ORGANIZATIONS ET AL. *v.* SUGGS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 811.

No. 95–558. THOMPSON *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 30.

No. 95–578. ROSQUETE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 639.

No. 95–585. HUERTA ROJAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1212.

No. 95–626. REYNOLDS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 103 Md. App. 780.

No. 95–5084. HOLMAN *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 164 Ill. 2d 356, 647 N. E. 2d 960.

No. 95–5290. DILLEHAY *v.* UNITED STATES; and
No. 95–5395. SAIKALY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 332.

No. 95–5309. BARRERA-ECHAVARRIA *v.* RISON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 44 F. 3d 1441.

No. 95–5474. CALVI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 312.

No. 95–5589. RIECK *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 95–5776. MORAN *v.* McDANIEL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 40 F. 3d 1567 and 57 F. 3d 690.

No. 95–5793. MAHAFFEY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 165 Ill. 2d 445, 651 N. E. 2d 174.

No. 95–5854. COOKE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 95–5897. PENRY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 903 S. W. 2d 715.

No. 95–5921. HAWKINS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 891 P. 2d 586.

No. 95–5934. KELLEY *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 773.

No. 95–5943. MCNAMARA *v.* COCHRAN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1286.

No. 95–5945. JENKINS *v.* KANSAS ET AL. C. A. 10th Cir. Certiorari denied.

No. 95–5949. TUCKER *v.* NEW JERSEY STATE PRISON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 770.

No. 95–5950. POLK *v.* KAISER, CHIEF OF OPERATIONS, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 286.

No. 95–5954. MILLER *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 131 Ore. App. 758, 888 P. 2d 605.

No. 95–5957. REEVES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1072.

No. 95–5958. RICKETTS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 37 Conn. App. 749, 659 A. 2d 188.

No. 95–5967. LENON *v.* PUNG, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 60 F. 3d 830.

No. 95–5969. BURTON *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 615 So. 2d 1042.

No. 95–5974. VINCENT *v.* C & P TELEPHONE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1067.

No. 95–5975. DEMAURO *v.* COLDWELL BANKER & CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 54 F. 3d 767.

No. 95–5977. FRANKLIN *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 170.

No. 95–5979. GRAHAM *v.* BAYH, GOVERNOR OF INDIANA, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 62 F. 3d 1419.

No. 95–5980. FLORES *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 95–5982. HUNTER *v.* CITIBANK, N. A. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 810.

No. 95–5985. SEAGLE *v.* MYERS. C. A. 4th Cir. Certiorari denied. Reported below: 61 F. 3d 901.

No. 95–5987. BOGLE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 655 So. 2d 1103.

No. 95–5988. RIVERA *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 166 Ill. 2d 279, 652 N. E. 2d 307.

No. 95–5991. WILSON *v.* DOUGHERTY COUNTY, GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1038.

No. 95–5993. WEST *v.* HANRAHAN. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 268 Ill. App. 3d 1117, 685 N. E. 2d 29.

No. 95–5999. LOOMIS *v.* RENTIE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1424.

No. 95–6000. IRONS *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1424.

No. 95–6012. MOODY *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–6013. MASON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 95–6014. JENKINS *v.* BURTZLOFF ET AL. C. A. 10th Cir. Certiorari denied.

No. 95–6030. HERNANDEZ *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 637.

No. 95–6032. GUPMAN ET UX. *v.* AGRIBANK, FCB, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 330.

No. 95–6036. PRYOR *v.* YOUNG, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 62 F. 3d 1429.

No. 95–6037. SHAFER *v.* CITY AND COUNTY OF DENVER. Dist. Ct. Colo, County of Denver. Certiorari denied.

No. 95–6041. PLY *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 95–6066. GONZALEZ *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6072. ELAM *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 636.

No. 95–6073. ABULKHAIR *v.* NEW JERSEY (two judgments). Super. Ct. N. J., App. Div. Certiorari denied.

No. 95–6164. ABDUL-WADOOD *v.* WILSON. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 905.

No. 95–6217. SAUNDERS *v.* MCANINCH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–6340. LOGAN, AKA VAUGHAN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 95–6354. GILKEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 F. 3d 901.

No. 95–6355. RUGGIERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 647.

No. 95–6362. CANNON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 55 F. 3d 684.

No. 95–6363. SALINAS-GALVAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 396.

No. 95–6370. WEST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 32.

No. 95–6374. COLEMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 F. 3d 457.

No. 95–6378. BRUNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1111.

No. 95–6397. SKORNIAK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 59 F. 3d 750.

No. 95–6416. RAPHAEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 F. 3d 458.

No. 95–6418. MATTOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 400.

No. 95–6421. SALEEM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 60 F. 3d 396.

No. 95–6423. BARRETTO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 128.

No. 95–6425. ALADICS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 400.

No. 95–6437. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 906.

No. 95–420. CALDERON, WARDEN *v.* DOUGLAS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 95–450. ORIX CREDIT ALLIANCE, INC. *v.* DELTA RESOURCES, INC. C. A. 11th Cir. Motions of American Council of Life Insurance and General Motors Acceptance Corp. et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 54 F. 3d 722.

No. 95–454. PATAKI, GOVERNOR OF NEW YORK, ET AL. *v.* BAKER ET AL. C. A. 2d Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 58 F. 3d 814.

No. 95-5996. CARPENTER *v.* GOMEZ, DIRECTOR, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 4th 634, 889 P. 2d 985.

Opinion of JUSTICE STEVENS, respecting the denial of the petition for writ of certiorari.

As I have pointed out on more than one occasion, an order denying a petition for certiorari expresses no opinion on the merits of the case. See, *e. g.*, *Barber* v. *Tennessee*, 513 U. S. 1184 (1995) (opinion of STEVENS, J., respecting denial of certiorari). That is so, in part, because the Court properly exercises broad discretion in the administration of its docket, and in part because there are often jurisdictional or prudential reasons for refusing to grant review of the questions presented in a petition. See *Singleton* v. *Commissioner*, 439 U. S. 940, 942–946 (1978) (memorandum of STEVENS, J., respecting denial of certiorari). Nonetheless, when the Court denies a petition that raises a substantial question, it is sometimes useful to point out those concerns which, although unrelated to the merits, justify the decision not to grant review. See, *e. g.*, *Lackey* v. *Texas*, 514 U. S. 1045 (1995) (memorandum of STEVENS, J., respecting denial of certiorari); *McCray* v. *New York*, 461 U. S. 961, 962–963 (1983) (opinion of STEVENS, J., respecting denial of certiorari).

As the dissent by three members of the California Supreme Court demonstrated, this case clearly raises a novel and important constitutional question: What standard should be applied in determining whether juror misconduct involving highly prejudicial information requires reversal of a capital conviction and sentence? Here, a juror falsely denied receiving information that petitioner was already under a sentence of death for other crimes. In sustaining petitioner's collateral attack on his conviction, the state trial judge frankly acknowledged the absence of a clear standard for determining prejudice in such a case. See *In re Carpenter*, 9 Cal. 4th 634, 669–670, 889 P. 2d 985, 1008 (1995) (Mosk, J. dissenting). In reversing the state trial judge's decision, the State Supreme Court impliedly acknowledged that no such standard exists by relying on cases of this Court that bear only a tangential relation to the issue involved. *Id.*, at 647–651, 889 P. 2d, at 993–995.

Despite the importance of the constitutional question presented, I concur in the order denying the petition for writ of certio-

rari. Because the State Supreme Court stated that the issue would remain open for further review when it acts on the direct appeal from petitioner's conviction, it is likely that the absence of a "final judgment" within the meaning of 28 U. S. C. § 1257 (1988 ed.) deprives this Court of jurisdiction to hear the case. At the very least, the expressed intention of the California Supreme Court to review the question further provides a prudential ground for declining to review at this time the juror misconduct issue presented in this petition.

No. 95–6734 (A–424). BARNES *v.* JABE, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. Reported below: 71 F. 3d 495.

Rehearing Denied

No. 94–9330. PRUNTY *v.* FERGUSON ET AL., *ante*, p. 831;

No. 94–9409. WILLIAMS *v.* UNITED STATES POSTAL SERVICE ET AL., *ante*, p. 834;

No. 94–9424. GREEN *v.* ZIEGLER, *ante*, p. 835;

No. 94–9561. O'CONNELL *v.* UNITED STATES, *ante*, p. 842;

No. 94–9606. BROWN *v.* VARNER, *ante*, p. 845;

No. 94–9632. HEWLETT *v.* PENNSYLVANIA, *ante*, p. 847;

No. 94–9644. HOYETT *v.* 40TH JUDICIAL CIRCUIT COURT ET AL., *ante*, p. 847;

No. 94–9759. MEANS *v.* UNITED STATES, *ante*, p. 854;

No. 94–9794. WATERS *v.* THOMAS, WARDEN, *ante*, p. 856;

No. 94–9858. BAKER *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL., *ante*, p. 860;

No. 95–5142. NOVAK *v.* NOVAK, *ante*, p. 879;

No. 95–5360. BENNETT *v.* COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, ET AL., *ante*, p. 891;

No. 95–5422. WANLESS *v.* OKLAHOMA, *ante*, p. 894;

No. 95–5604. IN RE KENNON, *ante*, p. 805;

No. 95–5713. BOYER *v.* UNITED STATES, *ante*, p. 904;

No. 95–5824. IN RE WOOD, *ante*, p. 805; and

No. 95–5878. IN RE LORENZ, *ante*, p. 911. Petitions for rehearing denied.

No. 94–8642. CRAWFORD *v.* DISTRICT OF COLUMBIA ET AL., *ante*, p. 908. Petition for rehearing denied. JUSTICE GINSBURG took no part in the consideration or decision of this petition.

NOVEMBER 14, 1995

Certiorari Denied

No. 95–6711 (A–414). SIDEBOTTOM *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 15, 1995

Dismissal Under Rule 46

No. 95–6023. SPIRKO *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 54 F. 3d 271.

Certiorari Denied

No. 95–6753 (A–427). SIDEBOTTOM *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 21, 1995

Certiorari Denied

No. 95–6831 (A–445). DELVECCHIO *v.* ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Application for stay of execution of sentence of death, presented to JUSTICE STEVENS, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE BREYER would grant the application for stay of execution. Reported below: 70 F. 3d 1274.

NOVEMBER 22, 1995

Certiorari Granted

No. 95–129. EXXON CO., U. S. A., ET AL. *v.* SOFEC, INC., ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 54 F. 3d 570.

No. 95–232. HENDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari granted. Reported below: 51 F. 3d 574.

No. 95–386. RICHARDS ET AL. *v.* JEFFERSON COUNTY, ALABAMA, ET AL. Sup. Ct. Ala. Certiorari granted. Reported below: 662 So. 2d 1127.

Rehearing Denied

No. 95–5417. LaRETTE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 894. Petition for rehearing denied.

NOVEMBER 27, 1995

Certiorari Granted—Vacated and Remanded

No. 94–9473. DAUGHTRY *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Gaudin*, 515 U. S. 506 (1995). Reported below: 48 F. 3d 829.

No. 95–447. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA. *v.* AMERICAN MEDICAL INTERNATIONAL, INC. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Waller* v. *Truck Ins. Exchange, Inc.*, 11 Cal. 4th 1, 900 P. 2d 619 (1995). Reported below: 54 F. 3d 785.

No. 95–5545. GATEWOOD *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Gaudin*, 515 U. S. 506 (1995). Reported below: 54 F. 3d 777.

Miscellaneous Orders

No. A–250. WEST *v.* HANRAHAN. App. Ct. Ill., 1st Dist. Application for stay, addressed to JUSTICE O'CONNOR and referred to the Court, denied.

No. A–401 (95–6494). HART *v.* HART. Ct. App. Cal., 2d App. Dist. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. D–1588. IN RE DISBARMENT OF JACKSON. Disbarment entered. [For earlier order herein, see 515 U. S. 1185.]

No. D–1590. IN RE DISBARMENT OF SMITH. Disbarment entered. [For earlier order herein, see *ante*, p. 804.]

No. D–1611. IN RE DISBARMENT OF BERNARD. James Curtiss Bernard, of Columbus, Ga., is suspended from the practice of

law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1612. IN RE DISBARMENT OF SUDDARD. Oliver V. Suddard, of Wilmington, Del., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1613. IN RE DISBARMENT OF JONES. David Arthur Jones, of Lincoln, N. H., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1614. IN RE DISBARMENT OF BILLINGS. Richard H. Billings, of Elizabeth, Colo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1615. IN RE DISBARMENT OF REGGIE. Edmund Michael Reggie, of Crowley, La., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1616. IN RE DISBARMENT OF KELLEY. Phil M. Kelley, of Portland, Ore., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1617. IN RE DISBARMENT OF SAVOY. John E. Savoy, of Phoenix, Ariz., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1618. IN RE DISBARMENT OF POWELL. William Jackson Powell, of Arlington, Va., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1619. IN RE DISBARMENT OF JASINSKI. Robert M. Jasinski, of Palm Beach, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1620. IN RE DISBARMENT OF NELSON. Paul Angus Nelson, of Tampa, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–24. DOE *v.* PORITZ, ATTORNEY GENERAL OF NEW JERSEY; and

No. M–25. KISSI *v.* MATTHEWS. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 95–6533. IN RE PAAR. Petition for writ of habeas corpus denied.

No. 95–564. IN RE KLECAN ET AL.;

No. 95–6413. IN RE THOMPSON; and

No. 95–6477. IN RE BECKWITH. Petitions for writs of mandamus denied.

Certiorari Denied

No. 94–2037. POMRANZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 43 F. 3d 156.

No. 94–9617. HANSEN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 649 So. 2d 1256.

No. 95–87. MURPHY *v.* DIVERSIFIED PRODUCTS CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1038.

No. 95–205. DALTON *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 216 Ga. App. 411, 454 S. E. 2d 554.

No. 95–265. CLEVELAND INDUSTRIAL SQUARE, INC. *v.* WHITE, MAYOR OF CLEVELAND, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 324.

No. 95–278. HAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 58 F. 3d 78.

No. 95–282. BROOKS ET AL. *v.* UNITED AIRLINES ET AL. Ct. App. Colo. Certiorari denied.

No. 95–301. STONEHENGE INSURED NOTES - I LIMITED PARTNERSHIP ET AL. *v.* DEPARTMENT OF THE TREASURY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 47 F. 3d 1157.

No. 95–309. INTERNATIONAL ALLIANCE OF THEATRICAL AND STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS, AFL–CIO *v.* COMPACT VIDEO SERVICES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 1464.

No. 95–329. DOOLITTLE *v.* NATIONAL CREDIT UNION ADMINISTRATION. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 536.

No. 95–366. REALI ET AL. *v.* FEMINIST WOMEN'S HEALTH CENTER. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 32 Cal. App. 4th 1641, 39 Cal. Rptr. 2d 189.

No. 95–456. RISTOW ET UX. *v.* SOUTH CAROLINA STATE PORTS AUTHORITY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 58 F. 3d 1051.

No. 95–459. REPLOGLE *v.* PENNSYLVANIA CIVIL SERVICE COMMISSION. Commw. Ct. Pa. Certiorari denied. Reported below: 657 A. 2d 60.

No. 95–467. MARTINEZ-RODRIGUEZ *v.* COLON-PIZARRO ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 54 F. 3d 980.

No. 95–469. ATLANTIC RICHFIELD CO. *v.* REBEL OIL CO., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 1421.

No. 95–470. UNITED EMPLOYER BENEFIT CORP. *v.* OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES ET AL. Ct. App. Ore. Certiorari denied. Reported below: 133 Ore. App. 477, 892 P. 2d 722.

No. 95–474. BREEDLOVE *v.* TYSONS MANOR HOMEOWNERS ASSN. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 265.

No. 95–475. SOUTHWALL TECHNOLOGIES, INC. *v.* CARDINAL IG CO. C. A. Fed. Cir. Certiorari denied. Reported below: 54 F. 3d 1570.

No. 95–476. CHRYSLER MOTORS CORP., NKA CHRYSLER CORP. *v.* LEE JANSSEN MOTOR CO. ET AL. Sup. Ct. Neb. Certiorari denied. Reported below: 248 Neb. 322, 534 N. W. 2d 309.

No. 95–477. NOVOPHARM LTD. *v.* GLAXO, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 52 F. 3d 1043.

No. 95–480. FIDELITY & CASUALTY COMPANY OF NEW YORK ET AL. *v.* AHYSEN ET AL. Ct. App. La., 5th Cir. Certiorari denied.

No. 95–482. WOODALL ET AL. *v.* CITY OF EL PASO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 49 F. 3d 1120.

No. 95–485. HERNANDEZ ET AL. *v.* THOMAS ET AL. Ct. App. Ariz. Certiorari denied.

No. 95–486. LITTLES *v.* JEFFERSON SMURFIT CORP. (U. S.). C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1051.

No. 95–487. PROPAC-MASS, INC. *v.* RUTHARDT, MASSACHUSETTS COMMISSIONER OF INSURANCE. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 420 Mass. 45, 648 N. E. 2d 407.

No. 95–490. RICHARDSON *v.* DISTRICT OF COLUMBIA COURT OF APPEALS. Ct. App. D. C. Certiorari denied.

No. 95–495. AARON SMITH TRUCKING CO., INC., ET AL. *v.* KING, BY HIS GUARDIAN, KING. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 823.

No. 95–496. MOORE *v.* INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 569 ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 339.

No. 95–497. SILVESTRI *v.* CHRISTMAN ET AL.; and IN RE SILVESTRI. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 814 (first judgment) and 817 (second judgment).

No. 95–499. CLELAND *v.* CITY OF BURLINGTON. Ct. App. Wash. Certiorari denied. Reported below: 76 Wash. App. 1054.

No. 95–501. YI *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 95–503. ORTALIZA ET UX. *v.* GENERAL MILLS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 72.

No. 95–504. FLORIDA *v.* MIRAGAYA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 654 So. 2d 262.

No. 95–506. VERMONT INFORMATION PROCESSING, INC. *v.* COMMISSIONER, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE. Ct. App. N. Y. Certiorari denied. Reported below: 86 N. Y. 2d 165, 654 N. E. 2d 954.

No. 95–507. SETTLE *v.* DICKSON COUNTY SCHOOL BOARD ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 152.

No. 95–508. KEARNS *v.* CHRYSLER CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 62 F. 3d 1430.

No. 95–510. THOMAS *v.* WHALEN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 1285.

No. 95–512. BOYETTE *v.* AMERICAN INTERNATIONAL ADJUSTMENT CO., INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1391.

No. 95–513. BANK MELLI IRAN ET AL. *v.* PAHLAVI. C. A. 9th Cir. Certiorari denied. Reported below: 58 F. 3d 1406.

No. 95–514. NOONE ET AL. *v.* NEW ENGLAND TELEPHONE CO. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 56 F. 3d 59.

No. 95–519. CHAVEZ ET UX. *v.* COPPER STATE RUBBER OF ARIZONA, INC., ET AL. Ct. App. Ariz. Certiorari denied. Reported below: 182 Ariz. 423, 897 P. 2d 725.

No. 95–528. SCHOEMER ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 26.

No. 95–542. LEON *v.* SUPREME COURT OF FLORIDA AND FLORIDA BOARD OF BAR EXAMINERS. Sup. Ct. Fla. Certiorari denied.

No. 95–560. BURLINGTON AIR EXPRESS, INC. *v.* GEORGIA PACIFIC CORP. ET AL. Ct. App. Ga. Certiorari denied. Reported below: 217 Ga. App. 312, 457 S. E. 2d 219.

No. 95–580. SCIMED LIFE SYSTEMS, INC. *v.* SCHNEIDER (EUROPE) AG ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 60 F. 3d 839.

No. 95–583. COLLINS *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 95–597. STORER ET AL. *v.* FRENCH, TRUSTEE. C. A. 6th Cir. Certiorari denied. Reported below: 58 F. 3d 1125.

No. 95–610. ROUSSIN *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 95–611. GEORGE ET AL. *v.* CONSOLO. C. A. 1st Cir. Certiorari denied. Reported below: 58 F. 3d 791.

No. 95–614. MID AMERICA TITLE CO. *v.* KIRK. C. A. 7th Cir. Certiorari denied. Reported below: 59 F. 3d 719.

No. 95–615. RAUCKHORST *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–627. SAADEH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 510.

No. 95–635. WALKER *v.* MCLELLAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 52 F. 3d 339.

No. 95–637. WOLFSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 55 F. 3d 58.

No. 95–640. GRIMM ET AL. *v.* COLUMBUS-AMERICA DISCOVERY GROUP, INC. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 556.

No. 95–645. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1391.

No. 95–654. SLAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–655. GERTZ *v.* ANNE ARUNDEL COUNTY, MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 339 Md. 261, 661 A. 2d 1157.

No. 95–657. RUSH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 636.

No. 95–658. FALKOFF *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 811.

No. 95–661. MCFARLAND *v.* PRINCE GEORGE'S COUNTY, MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 167.

No. 95–663. OLBRES ET UX. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 61 F. 3d 967.

No. 95–675. KELLOGG, TRUSTEE FOR WEST TEXAS MARKETING CORP. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 54 F. 3d 1194.

No. 95–680. LIBERATORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1418.

No. 95–681. GURINO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1388.

No. 95–5085. DOWNS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 95–5196. GREEN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 31 Cal. App. 4th 1001, 38 Cal. Rptr. 2d 401.

No. 95–5318. TENBUSCH *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 131 Ore. App. 634, 886 P. 2d 1077.

No. 95–5349. BRUCE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 95–5355. WARD *v.* DYKE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 58 F. 3d 271.

No. 95–5415. GONZALEZ LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 55 F. 3d 632.

No. 95–5420. POWELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 898 S. W. 2d 821.

No. 95–5499. COX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 74.

No. 95–5528. LEWIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 636.

No. 95–5584. POSEY *v.* DALTON, SECRETARY OF THE NAVY. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 635.

No. 95–5600. KELLY *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 2d Cir. Certiorari denied.

No. 95–5649. SIAO-PAO *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 95–5736. DAVIS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 457.

No. 95–5740. RISSLEY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 165 Ill. 2d 364, 651 N. E. 2d 133.

No. 95–5744. LOWERY *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 640 N. E. 2d 1031.

No. 95–6015. MCGINLEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 440 Pa. Super. 650, 655 A. 2d 1046.

No. 95–6044. ADAMS, INDIVIDUALLY AND AS NEXT FRIEND FOR ADAMS, A MINOR CHILD *v.* CITY OF FORT WORTH, TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 888 S. W. 2d 607.

No. 95–6045. BAKER *v.* LARRIMER & LARRIMER ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–6050. PERKINS *v.* LECUREUX, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 58 F. 3d 214.

No. 95–6051. CHOUDHARY *v.* VERMONT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 47 F. 3d 1159.

No. 95–6058. COLLINS *v.* OKLAHOMA ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 60 F. 3d 837.

No. 95–6068. HAMILTON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 95–6070. BIRGES *v.* NEVADA SUPREME COURT. Sup. Ct. Nev. Certiorari denied. Reported below: 110 Nev. 1532, 893 P. 2d 394.

No. 95–6077. RODRIGUEZ *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 657 So. 2d 1166.

No. 95–6080. STANFORD *v.* TIMES MIRROR CO. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–6081. COLEMAN *v.* MURPHY ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–6085. SEASTRONG *v.* MILLER COUNTY JUVENILE COURT CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 48 F. 3d 1224.

No. 95–6088. C. J. *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 166 Ill. 2d 264, 652 N. E. 2d 315.

No. 95–6089. BURGESS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 95–6090. WILLIAMS *v.* BREWER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 55 F. 3d 320.

No. 95–6092. VAN LEE *v.* MAYER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–6093. HINCHEY *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 181 Ariz. 307, 890 P. 2d 602.

No. 95–6096. WEINSTEIN *v.* WEINSTEIN. Super. Ct. Pa. Certiorari denied. Reported below: 440 Pa. Super. 660, 655 A. 2d 1054.

No. 95–6099. LEMONS *v.* O'SULLIVAN, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 54 F. 3d 357.

No. 95–6101. MONROE *v.* BROWN. Sup. Ct. Va. Certiorari denied.

No. 95–6111. MATUSKA *v.* DISTRICT COURT OF CASS COUNTY ET AL. Sup. Ct. N. D. Certiorari denied.

No. 95–6112. MURRAY *v.* WEST. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 653 So. 2d 1035.

No. 95–6115. WATERS *v.* MAGURN. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1043.

No. 95–6118. PIERCE *v.* FREEMAN, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied.

No. 95–6123. BOWIE *v.* NORTH CAROLINA; and
No. 95–6162. BOWIE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 340 N. C. 199, 456 S. E. 2d 771.

No. 95–6129. WILLIAMS *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 95–6130. THOMPSON *v.* BUCHANAN, SHERIFF, YAVAPAI COUNTY, ARIZONA, ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 95–6140. MUTCH *v.* JARRATT ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6141. LEWIS *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6145. MARTIN *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 95–6146. JACKSON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–6153. PINDER *v.* JOHNSON. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 1169.

No. 95–6154. SANDERS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 95–6155. POLLOCK *v.* BRIGANO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–6156. WHITE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 340 N. C. 264, 457 S. E. 2d 841.

No. 95–6157. VENERI *v.* WHITE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–6158. GRANT *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 95–6159. SPEARMAN *v.* MORALES, ATTORNEY GENERAL OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–6160. ROSENDAHL *v.* SEYMOUR ET AL. C. A. 8th Cir. Certiorari denied.

No. 95–6166. RIEBER *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 663 So. 2d 999.

No. 95–6168. MITCHELL *v.* SMITH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 339.

No. 95–6169. KOHLER *v.* KELLY, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 58 F. 3d 58.

No. 95–6171. BRINKLEY *v.* SKJONSBERG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 832.

No. 95–6172. WASHINGTON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–6180. BURTON *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 1398.

No. 95–6181. SANTIAGO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 439 Pa. Super. 447, 654 A. 2d 1062.

No. 95–6185. HASSAN *v.* LUBBOCK INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 55 F. 3d 1075.

No. 95–6189. ERVIN *v.* MORRISON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1049.

No. 95–6195. JACKSON *v.* BOARD OF CIVIL SERVICE COMMISSIONERS FOR THE CITY OF LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–6198. WENDT *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–6199. SOLOMON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 340 N. C. 212, 456 S. E. 2d 778.

No. 95–6200. CAMPBELL *v.* FLORIDA PAROLE COMMISSION. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 657 So. 2d 67.

No. 95–6201. JENKINS *v.* SCOTT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 66 F. 3d 338.

No. 95–6205. STOCKENAUER *v.* DELEEUW. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1070.

No. 95–6208. LISTERMAN *v.* GTE CALIFORNIA INC. ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6225. BEAIRD *v.* CODY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 915.

No. 95–6226. CAVIN *v.* SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 51 F. 3d 265.

No. 95–6241. LYNCH *v.* BENSALEM TOWNSHIP ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–6253. FAUTENBERRY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 72 Ohio St. 3d 435, 650 N. E. 2d 878.

No. 95–6270. AVITT *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 95–6280. WILLIAMS *v.* BRADBURN ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–6290. SMITH *v.* LAMER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 95–6293. BUTLER *v.* SMITH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 772.

No. 95–6295. WALLS *v.* DELAWARE DEPARTMENT OF CORRECTION. Sup. Ct. Del. Certiorari denied. Reported below: 663 A. 2d 488.

No. 95–6315. TRIMPER *v.* CITY OF NORFOLK, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 58 F. 3d 68.

No. 95–6343. MANSORI *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 95–6344. GRAHAM *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 250 Va. 79, 459 S. E. 2d 97.

No. 95–6348. GRAHAM *v.* HENDERSON. C. A. 7th Cir. Certiorari denied. Reported below: 59 F. 3d 173.

No. 95–6349. DURAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 938.

No. 95–6356. STEELE *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 62 F. 3d 1419.

No. 95–6358. REEVES *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–6360. TEPPER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 55 F. 3d 685.

No. 95–6368. TURNER *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 64 F. 3d 674.

No. 95–6379. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1036.

No. 95–6382. HECKARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 54 F. 3d 786.

No. 95–6384. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 395.

No. 95–6386. SPAENI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 60 F. 3d 313.

No. 95–6387. REID *v.* UNITED STATES; and
No. 95–6532. REID *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 95–6388. PITTS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 61 F. 3d 904.

No. 95–6389. PRINCE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 57 F. 3d 1074.

No. 95–6394. WOODS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 61 F. 3d 904.

No. 95–6396. PEGANOFF *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 440 Pa. Super. 651, 655 A. 2d 1047.

No. 95–6399. JENNINGS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–6400. MCQUAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 332.

No. 95–6401. MARTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 667.

No. 95–6405. FELTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 826.

No. 95–6407. ELLISOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 401.

No. 95–6408. DOYLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 60 F. 3d 396.

No. 95–6409. GARRETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 396.

No. 95–6410. HAGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 65 F. 3d 178.

No. 95–6411. ELI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1241.

No. 95–6415. EDMOND ET AL. *v.* UNITED STATES; and
No. 95–6420. SUTTON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 52 F. 3d 1080.

No. 95–6417. LEGGETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1417.

No. 95–6426. BENNETT *v.* UNITED STATES; and
No. 95–6491. HANSLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 F. 3d 709.

No. 95–6428. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 914.

No. 95–6430. VERAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 1365.

No. 95–6435. MICHON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 95–6439. POWELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 1064.

No. 95–6442. GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 465.

No. 95–6452. AKINRINADE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 1279.

No. 95–6454. CASTILLO-GUERRERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 399.

No. 95–6456. BERNAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 313.

No. 95–6459. FURLONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 913.

No. 95–6461. HARPER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 43 M. J. 158.

No. 95–6462. HAMPTON *v.* VALENTINE. C. A. 2d Cir. Certiorari denied.

No. 95–6463. ANDERSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 59 F. 3d 1323.

No. 95–6464. HIGGS ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 399.

No. 95–6468. OSORIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 399.

No. 95–6470. REED *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 61 F. 3d 904.

No. 95–6476. SCRUGGS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 663.

No. 95–6481. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 60 F. 3d 193.

No. 95–6482. BORKOSKI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 61 F. 3d 142.

No. 95–6484. BARQUERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1078.

No. 95–6485. ANDERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 1290.

No. 95–6486. COLLINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 1379.

No. 95–6487. GIBBS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 536.

No. 95–6489. WITHERSPOON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 F. 3d 902.

No. 95–6493. GREEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1418.

No. 95–6496. SANFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–6498. ALLEN *v.* HADDEN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 57 F. 3d 1529.

No. 95–6499. GRIFFITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1067.

No. 95–6502. GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1241.

No. 95–6508. MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 913.

No. 95–6511. BOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 95–6512. ANITON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 F. 3d 901.

No. 95–6514. BOCOOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 167.

No. 95–6515. MARTINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 1040.

No. 95–6519. BASKIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 95–6520. FLINT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 535.

No. 95–6522. LESURE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 320.

No. 95–6525. BARNETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 667.

No. 95–6528. GENTRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 917.

No. 95–6529. GATEWOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 60 F. 3d 248.

No. 95–6530. SALEMO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 214.

No. 95–6531. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 319.

No. 95–6534. SALEMO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 164.

No. 95–6535. TAPIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1137.

No. 95–6537. VALENCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 914.

No. 95–6538. AMEZOLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1425.

No. 95–6539. DAVIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 164.

No. 95–6543. KIETT *v.* BEYER ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–6545. WALKER, AKA HARRELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1196.

No. 95–6548. KEEGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 913.

No. 95–6549. JEMERIGBE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 1018.

No. 95–6553. MAHAFFEY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 166 Ill. 2d 1, 651 N. E. 2d 1055.

No. 95–6559. ALLISON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 43.

No. 95–310. ST. JUDE HOSPITAL OF KENNER, LOUISIANA, INC., ET AL. *v.* TRAVELERS INSURANCE CO. C. A. 5th Cir. Certiorari denied. JUSTICE SCALIA took no part in the consideration or decision of this petition. Reported below: 56 F. 3d 1386.

No. 95–324. MICHIGAN *v.* GARCIA. Sup. Ct. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 448 Mich. 442, 531 N. W. 2d 683.

No. 95–493. OKLAHOMA *v.* FLORES. Ct. Crim. App. Okla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 896 P. 2d 558.

No. 95–6008. ISAACS *v.* THOMAS, WARDEN. Super. Ct. Ga., Butts County. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition.

Rehearing Denied

No. 94–1910. DYKEMA *v.* VOLKSWAGENWERK AG ET AL., *ante*, p. 811;

No. 94–1948. HARREL *v.* UNIVERSITY OF HOUSTON ET AL., *ante*, p. 813;

No. 94–1960. FREEMAN ET VIR *v.* SIMON ET AL., *ante*, p. 814;

No. 94–1975. BARDNEY *v.* UNITED STATES, *ante*, p. 815;

No. 94–1986. VISWANATHAN *v.* MISSISSIPPI COUNTY COMMUNITY COLLEGE BOARD OF TRUSTEES, *ante*, p. 815;

No. 94–2023. DALBERTO *v.* PENNSYLVANIA, *ante*, p. 818;

No. 94–2091. BARTON ET AL. *v.* AMERICAN RED CROSS ET AL., *ante*, p. 822;

No. 94–9215. LEEDY *v.* AGRIBANK, FCB, *ante*, p. 827;

No. 94–9220. RATNAWEERA ET UX. *v.* RESOLUTION TRUST CORPORATION ET AL., *ante*, p. 828;

No. 94–9306. MALONEY *v.* GLADSTONE ET AL., *ante*, p. 830;

No. 94–9313. MORRIS, AKA PRUITT *v.* RIVERS, WARDEN, *ante*, p. 830;

No. 94–9335. GIVENS *v.* LOUISIANA, *ante*, p. 831;

No. 94–9353. SPINNER ET UX. *v.* COUNTY OF LOS ANGELES, DEPARTMENT OF PUBLIC WORKS, ET AL., *ante*, p. 832;

No. 94–9359. GASKINS *v.* RUNYON, POSTMASTER GENERAL, *ante*, p. 832;

No. 94–9373. BATTLE *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 833;

No. 94–9405. IN RE ECHOLS, *ante*, p. 805;

No. 94–9423. FOTI *v.* CAMERON ET AL., *ante*, p. 835;

No. 94–9456. RIVERA *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, *ante*, p. 836;

No. 94–9587. TRICE *v.* WILLIAMS ET AL., *ante*, p. 844;

No. 94–9599. MARTEL *v.* NEW HAMPSHIRE; and MARTEL *v.* CITY OF CONCORD, *ante*, p. 844;

No. 94–9641. ISHMAEL *v.* UNITED STATES, *ante*, p. 818;

No. 94–9660. TESTA *v.* HOTEL EMPLOYEES & RESTAURANT EMPLOYEES INTERNATIONAL UNION, AFL–CIO, ET AL., *ante*, p. 848;

No. 94–9725. JENKINS *v.* KANSAS, *ante*, p. 852;

No. 95–18. O'NEAL *v.* JUDICIAL QUALIFICATION COMMISSION OF GEORGIA, *ante*, p. 862;

No. 95–94. SALAZAR *v.* PRICE CO. ET AL., *ante*, p. 865;

No. 95–161. TRIEM ET AL. *v.* TAMICO, INC., *ante*, p. 868;

No. 95–183. BRAZIL-BREASHEARS *v.* BILANDIC ET AL., *ante*, p. 869;

No. 95–5037. SHEA *v.* SHEA, *ante*, p. 873;

No. 95–5070. JENKINS *v.* STUART ET AL., *ante*, p. 875;

No. 95–5091. BEALS *v.* DEL PAPA, ATTORNEY GENERAL OF NEVADA, ET AL., *ante*, p. 876;

No. 95–5132. WISHON *v.* CITY OF JACKSONVILLE, FLORIDA, *ante*, p. 879;

No. 95–5148. JOHNSON *v.* UNITED STATES, *ante*, p. 880;

No. 95–5163. BISHOP *v.* STATE BAR OF GEORGIA, *ante*, p. 880;

No. 95–5178. COLLIER *v.* CALIFORNIA, *ante*, p. 881;

No. 95–5185. BARRETT *v.* FIELDHOUSE ET AL., *ante*, p. 881;

No. 95–5206. MIDDLETON *v.* KENTUCKY, *ante*, p. 882;

No. 95–5254. REEVES *v.* VANCE ET AL., *ante*, p. 885;

No. 95–5267. TURNER *v.* MERIT SYSTEMS PROTECTION BOARD, *ante*, p. 886;

No. 95–5268. WINTERS *v.* GENERAL MOTORS ACCEPTANCE CORP. ET AL., *ante*, p. 886;

No. 95–5274. JENKINS *v.* MCBRIDE, WARDEN, ET AL., *ante*, p. 875;

No. 95–5275. PAQUETTE *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 886;

No. 95–5278. RUTHERFORD *v.* HAILEY, *ante*, p. 887;

No. 95–5308. PANKEY *v.* CARNAHAN, GOVERNOR OF MISSOURI, ET AL.; and PANKEY *v.* COOK ET AL., *ante*, p. 888;

No. 95–5389. JOHNSON *v.* EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 893;

No. 95–5408. CURIALE *v.* ALASKA ET AL., *ante*, p. 894;

No. 95–5468. LINDOW *v.* UNITED STATES, *ante*, p. 897;

No. 95–5490. KETCHUM *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL., *ante*, p. 898;

No. 95–5577. RIVERA *v.* LONG ISLAND RAILROAD, *ante*, p. 921; and

No. 95–5925. GROSSI *v.* UNITED STATES, *ante*, p. 927. Petitions for rehearing denied.

No. 94–1841. RUYLE ET AL. *v.* CONTINENTAL OIL CO., *ante*, p. 906; and

No. 95–79. OLSZEWSKI *v.* AMERICAN TELEPHONE & TELEGRAPH CO., *ante*, p. 906. Petitions for rehearing denied. JUSTICE O'CONNOR took no part in the consideration or decision of these petitions.

NOVEMBER 28, 1995

Dismissal Under Rule 46

No. 95–544. CENTENNIAL LIFE INSURANCE CO. ET AL. *v.* KELLEY ET AL. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.

Miscellaneous Order

No. 94–1893. UNITED STATES ET AL. *v.* CHESAPEAKE & POTOMAC TELEPHONE COMPANY OF VIRGINIA ET AL.; and

No. 94–1900. NATIONAL CABLE TELEVISION ASSN., INC. *v.* BELL ATLANTIC CORP. ET AL. C. A. 4th Cir. [Certiorari

granted, 515 U. S. 1157.] In these cases, 10 additional minutes alloted for oral argument.

Certiorari Denied

No. 95–6643 (A–408). HAI HAI VUONG *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 62 F. 3d 673.

No. 95–6679 (A–411). AMOS *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 61 F. 3d 333.

No. 95–6904 (A–463). LARETTE *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 70 F. 3d 986.

DECEMBER 1, 1995

Certiorari Granted

No. 95–323. UNITED STATES *v.* NOLAND, TRUSTEE FOR DEBTOR FIRST TRUCK LINES, INC. C. A. 6th Cir. Certiorari granted and case set for oral argument in tandem with No. 95–325, *United States* v. *Reorganized CF&I Fabricators of Utah, Inc., et al.*, immediately *infra*. Reported below: 48 F. 3d 210.

No. 95–325. UNITED STATES *v.* REORGANIZED CF&I FABRICATORS OF UTAH, INC., ET AL. C. A. 10th Cir. Certiorari granted and case set for oral argument in tandem with No. 95–323, *United States* v. *Noland, Trustee for Debtor First Truck Lines, Inc.*, immediately *supra*. Reported below: 53 F. 3d 1155.

DECEMBER 4, 1995

Dismissal Under Rule 46

No. 94–1726. TEXACO INC. *v.* AMERICAN GEOPHYSICAL UNION ET AL. C. A. 2d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 60 F. 3d 913.

Certiorari Granted—Vacated and Remanded

No. 94–7702. MARBURY *v.* JABE, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Thompson* v. *Keohane*, *ante*, p. 99. Reported below: 28 F. 3d 1213.

No. 95–5081. FELTROP *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Thompson* v. *Keohane*, *ante*, p. 99. Reported below: 46 F. 3d 766.

Miscellaneous Orders. (See also No. 121, Orig., *ante*, p. 122.)

No. A–476. LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. *v.* CARRIGER. Application to vacate stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied.

No. D–1572. IN RE DISBARMENT OF GIAMPA. Disbarment entered. [For earlier order herein, see 515 U. S. 1172.]

No. D–1621. IN RE DISBARMENT OF HARVEY. Walter L. Harvey, of Scottsdale, Ariz., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–16. MARIAN *v.* GORIS ET AL. Motion for reconsideration of order denying leave to file petition for writ of certiorari out of time [*ante*, p. 928] denied.

No. M–26. BERRY *v.* OHIO. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 94–1837. BARNETT BANK OF MARION COUNTY, N. A. *v.* NELSON, FLORIDA INSURANCE COMMISSIONER, ET AL. C. A. 11th Cir. [Certiorari granted *sub nom. Barnett Bank of Marion County, N. A.* v. *Gallagher*, 515 U. S. 1190.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–83. MEGHRIG ET AL. *v.* KFC WESTERN, INC. C. A. 9th Cir. [Certiorari granted, 515 U. S. 1192.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 94–1941. UNITED STATES *v.* VIRGINIA ET AL.; and

No. 94–2107. VIRGINIA ET AL. *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 910.] Motion of the Solicitor General to dispense with printing the joint appendix granted. JUSTICE THOMAS took no part in the consideration or decision of this motion.

No. 94–2003. LOTUS DEVELOPMENT CORP. *v.* BORLAND INTERNATIONAL, INC. C. A. 1st Cir. [Certiorari granted, 515 U. S. 1191.] Motion of American Intellectual Property Law Association for leave to file a brief as *amicus curiae* granted. JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 94–2032. FRANKLIN ET AL. *v.* LAWRIMORE ET AL., *ante*, p. 801. Motion of appellees to retax costs granted.

No. 95–26. MARKMAN ET AL. *v.* WESTVIEW INSTRUMENTS, INC., ET AL. C. A. Fed. Cir. [Certiorari granted, 515 U. S. 1192.] Motion of American Board of Trial Advocates for leave to file a brief as *amicus curiae* granted.

No. 95–157. UNITED STATES *v.* ARMSTRONG ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 942.] Motion for appointment of counsel granted, and it is ordered that Joseph F. Walsh, Esq., of Los Angeles, Cal., be appointed to serve as counsel for respondent Robert Rozelle in this case. Motion for appointment of counsel granted, and it is ordered that Barbara E. O'Connor, Esq., of Los Angeles, Cal., be appointed to serve as counsel for respondent Shelton Auntwan Martin in this case. Motion for appointment of counsel granted, and it is ordered that Timothy C. Lannen, Esq., of Los Angeles, Cal., be appointed to serve as counsel for respondent Aaron Hampton in this case.

No. 95–5207. COOPER *v.* OKLAHOMA. Ct. Crim. App. Okla. [Certiorari granted, *ante*, p. 910.] Motion of American Association on Mental Retardation et al. for leave to file a brief as *amici curiae* granted.

No. 95–5257. ORNELAS ET AL. *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante*, p. 963.] Peter D. Isakoff, Esq., of Washington, D. C., is invited to brief and argue this case as *amicus curiae* in support of the judgment below.

No. 95–6234. IN RE KEMP; and

No. 95–6613. IN RE ADEDEJI. Petitions for writs of mandamus denied.

No. 95–6206. IN RE AKPAN; and

No. 95–6521. IN RE JANEK. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Denied

No. 94–9803. RAINEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 540 Pa. 220, 656 A. 2d 1326.

No. 95–176. MAYER ET UX. *v.* SPANEL INTERNATIONAL, LTD., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 670.

No. 95–242. NEBRASKA *v.* WILLIAMS. Sup. Ct. Neb. Certiorari denied. Reported below: 247 Neb. 931, 531 N. W. 2d 222.

No. 95–353. MITCHELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 283.

No. 95–360. LIQUIDATION COMMISSION FOR BCCI (OVERSEAS) LTD., MACAU *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 48 F. 3d 551.

No. 95–361. SUN COUNTRY AIRLINES, INC. *v.* FEDERAL AVIATION ADMINISTRATION. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1531.

No. 95–364. COODY *v.* THOMSON NEWSPAPERS, INC., ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 320 Ark. 455, 896 S. W. 2d 897.

No. 95–381. CONNORS *v.* STERLING MILK CO. ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 72 Ohio St. 3d 1208, 647 N. E. 2d 1384.

No. 95–428. CITY OF COLORADO SPRINGS ET AL. *v.* BOARD OF COUNTY COMMISSIONERS OF EAGLE COUNTY, COLORADO, ET

AL. Ct. App. Colo. Certiorari denied. Reported below: 895 P. 2d 1105.

No. 95–442. U. S. HEALTHCARE, INC., ET AL. *v.* DUKES, TRUSTEE AD LITEM OF THE ESTATE OF DUKES, DECEASED, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 57 F. 3d 350.

No. 95–468. NATIONAL ENQUIRER, INC., ET AL. *v.* HOOD ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–478. COMPAGNIE DE REASSURANCE D'ILE DE FRANCE ET AL. *v.* NEW ENGLAND REINSURANCE CORP. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 57 F. 3d 56.

No. 95–488. ALASKA AIRLINES, INC., ET AL. *v.* CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 33 Cal. App. 4th 506, 39 Cal. Rptr. 2d 426.

No. 95–515. JONES-BLAIR CO. ET AL. *v.* HARDAGE STEERING COMMITTEE. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 343.

No. 95–523. SPEARS *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 234 Conn. 78, 662 A. 2d 80.

No. 95–526. ALDRIDGE ET AL. *v.* LILY-TULIP, INC. SALARY RETIREMENT PLAN BENEFITS COMMITTEE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 40 F. 3d 1202.

No. 95–530. DENVER & RIO GRANDE WESTERN RAILROAD CO. *v.* GREEN. C. A. 10th Cir. Certiorari denied. Reported below: 59 F. 3d 1029.

No. 95–531. BILDER *v.* OHIO. Ct. App. Ohio, Summit County. Certiorari denied. Reported below: 99 Ohio App. 3d 653, 651 N. E. 2d 502.

No. 95–533. BRANSON *v.* NOTT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 287.

No. 95–536. FRIEDMAN ET UX. *v.* GRACE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1141.

No. 95–537. GIAMPA *v.* GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT OF NEW YORK. App. Div., Sup. Ct.

N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 211 App. Div. 2d 212, 628 N. Y. S. 2d 323.

No. 95–538. DOLENZ *v.* NATIONWIDE INDEMNITY INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 637.

No. 95–539. ELIE ET AL. *v.* BROXMEYER. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 647 So. 2d 893.

No. 95–541. CARPENTER *v.* CONDON, ATTORNEY GENERAL OF SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 318 S. C. 282, 458 S. E. 2d 533.

No. 95–546. MILWAUKEE METROPOLITAN SEWERAGE DISTRICT *v.* S. A. HEALY CO. C. A. 7th Cir. Certiorari denied. Reported below: 60 F. 3d 305.

No. 95–549. DUMAS ET AL. *v.* PLAYBOY ENTERPRISES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 53 F. 3d 549.

No. 95–550. PRINCE GEORGE'S COUNTY, MARYLAND *v.* 11126 BALTIMORE BOULEVARD, INC., T/A WARWICK BOOKS. C. A. 4th Cir. Certiorari denied. Reported below: 58 F. 3d 988.

No. 95–551. SEARS ROEBUCK & CO. *v.* U. S. PHILIPS CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 55 F. 3d 592.

No. 95–552. HARFORD COUNTY, MARYLAND *v.* CHESAPEAKE B & M, INC., T/A HIGHWAY CRAFT, GIFT & BOOK STORE. C. A. 4th Cir. Certiorari denied. Reported below: 58 F. 3d 1005.

No. 95–553. ROWLAND *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 901 S. W. 2d 871.

No. 95–555. JACKSON *v.* OFFICE OF DISCIPLINARY COUNSEL. Sup. Ct. Pa. Certiorari denied. Reported below: 541 Pa. 591, 664 A. 2d 1340.

No. 95–562. MAXWELL *v.* E-SYSTEMS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 823.

No. 95–569. ANDRISANI *v.* WISCOT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 42 F. 3d 1398.

No. 95–571. MENDENHALL *v.* GOLDSMITH ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 59 F. 3d 685.

No. 95–573. LURIE *v.* HALDERMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1077.

No. 95–582. MUSTIN *v.* WITHROW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 47 F. 3d 1169.

No. 95–589. WESTINGHOUSE ELECTRIC CORP. ET AL. *v.* BOARD OF MANAGERS OF WINSTON TOWERS NO. 4 CONDOMINIUM ASSN. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 267 Ill. App. 3d 1070, 684 N. E. 2d 1117.

No. 95–592. BANK OF CALIFORNIA, N. A., TRUSTEE OF THE JULIA D. RAGSDALE TRUST, ET AL. *v.* OREGON DEPARTMENT OF REVENUE. Sup. Ct. Ore. Certiorari denied. Reported below: 321 Ore. 216, 895 P. 2d 1348.

No. 95–603. OPERATING ENGINEERS PENSION TRUST ET AL. *v.* INSURANCE COMPANY OF THE WEST. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 35 Cal. App. 4th 59, 42 Cal. Rptr. 2d 1.

No. 95–672. GARY *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 59 F. 3d 1391.

No. 95–687. NEGRETTE *v.* PRINCIPAL MUTUAL LIFE INSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 72.

No. 95–698. FREEMAN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 239.

No. 95–701. WEIL, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING *v.* HERN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 57 F. 3d 906.

No. 95–729. PORTER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 73.

No. 95–5616. CARR *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 95–5876. LEVINSON *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 95–6018. PUTMAN *v.* THOMAS, WARDEN. Super. Ct. Ga., Butts County. Certiorari denied.

No. 95–6135. VANSICKLE *v.* ENGLISH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT WAYNESBURG, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 898.

No. 95–6167. MARTINEZ *v.* ROTH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 342.

No. 95–6209. CANDELARIA *v.* TANSY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 54 F. 3d 787.

No. 95–6210. BRAY *v.* BREWER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 466.

No. 95–6224. CARTER *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 394.

No. 95–6228. BETTS *v.* ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 275.

No. 95–6229. CAVIN *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 95–6231. CARSON *v.* TEXAS DEPARTMENT OF CRIMINAL JUSTICE, PAROLE DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 393.

No. 95–6232. WINDOM *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 656 So. 2d 432.

No. 95–6239. MANNING *v.* ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 31.

No. 95–6240. LUCIEN *v.* JOHNSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 573.

No. 95–6242. HANSEL *v.* TOWN COURT FOR THE TOWN OF SPRINGFIELD, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 56 F. 3d 391.

No. 95–6247. HAYES *v.* KLINCAR ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–6256. WILLIAMS *v.* VAUGHN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 95–6259. GERWIG *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 95–6260. DIAZ *v.* CARPENTER ET AL. Ct. App. Ind. Certiorari denied. Reported below: 650 N. E. 2d 688.

No. 95–6262. OLTARZEWSKI *v.* MARTINEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 17.

No. 95–6265. CONBOY *v.* T. ROWE PRICE. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 821.

No. 95–6267. VEGA *v.* DALEY. Sup. Ct. Fla. Certiorari denied. Reported below: 657 So. 2d 1163.

No. 95–6268. CHIA *v.* MOTOROLA COMMUNICATIONS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 174.

No. 95–6271. GRUBB *v.* FRYE, SHERIFF, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 62 F. 3d 1414.

No. 95–6282. CHOUDHARY *v.* VERMONT DEPARTMENT OF PUBLIC SERVICE ET AL. Sup. Ct. Vt. Certiorari denied. Reported below: 163 Vt. 655, 659 A. 2d 1164.

No. 95–6284. SCAIFE *v.* JACKSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 69 F. 3d 548.

No. 95–6292. HARPER *v.* SUTTON, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–6302. WUNDERLICH *v.* GENESEE COUNTY, MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 95–6318. SEALS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–6327. CSORBA *v.* VARO, INC. C. A. 5th Cir. Certiorari denied.

No. 95–6342. ROBERSON *v.* HENSON. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 774.

No. 95–6359. SPINKS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 441 Pa. Super. 673, 657 A. 2d 53.

No. 95–6364. ALLEN *v.* HUNDLEY, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 55 F. 3d 414.

No. 95–6438. LEWIS *v.* PALMS ASSOCIATES; and LEWIS *v.* CIRCUIT COURT OF VIRGINIA, CITY OF VIRGINIA BEACH. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1066 (first judgment); 64 F. 3d 658 (second judgment).

No. 95–6457. CARTER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 72 Ohio St. 3d 545, 651 N. E. 2d 965.

No. 95–6467. MANES *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 134 Ore. App. 670, 896 P. 2d 18.

No. 95–6490. WEST *v.* NEWBERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–6501. HANSLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 F. 3d 709.

No. 95–6513. BEIDEMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 164.

No. 95–6523. WILLIAMS *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 95–6527. LORD *v.* LORD. App. Ct. Conn. Certiorari denied.

No. 95–6540. BRIGMAN *v.* FREEMAN, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 62 F. 3d 1414.

No. 95–6544. NANNI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 59 F. 3d 1425.

No. 95–6547. JOHNSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 636 A. 2d 978.

No. 95–6551. BOONE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 F. 3d 323.

No. 95–6554. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 635.

No. 95–6560. ALTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 1065.

No. 95–6561. CLARK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 917.

No. 95–6563. RANKIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 64 F. 3d 338.

No. 95–6564. STEEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 55 F. 3d 1022.

No. 95–6566. EDGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1245.

No. 95–6567. TUNNELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 667.

No. 95–6568. TALBERT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 917.

No. 95–6574. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 61 F. 3d 904.

No. 95–6584. WYNN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 61 F. 3d 921.

No. 95–6589. GIRARDI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 62 F. 3d 943.

No. 95–6590. DANIEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 401.

No. 95–6591. HAYNES ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1418.

No. 95–6594. LEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1418.

No. 95–6596. KRIMMEL *v.* HOPKINS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 56 F. 3d 873.

No. 95–6600. YUSUFU, AKA KANO, AKA BARBARINE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 63 F. 3d 505.

No. 95–6606. CLAIREAYANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1112.

No. 95–6610. JACKSON *v.* UNITED STATES;
No. 95–6615. GORDON *v.* UNITED STATES;
No. 95–6637. JACKSON *v.* UNITED STATES; and
No. 95–6652. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1111.

No. 95–6616. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1246.

No. 95–6619. SIDDIQUE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1426.

No. 95–6622. DAVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1113.

No. 95–6626. CASTELLANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1241.

No. 95–6627. BLAKE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 59 F. 3d 138.

No. 95–6628. OGUGUO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1071.

No. 95–6632. TREVINO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 177.

No. 95–6633. DE LEON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1112.

No. 95–6635. FRANCIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 341.

No. 95–6638. SHIVERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 938.

No. 95–6639. SHEATS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 180.

No. 95–6641. SHOMORIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 95–6642. OGANDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 340.

No. 95–6646. WESLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 664.

No. 95–6648. THATCHER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 F. 3d 1429.

No. 95–6650. JOHNSON *v.* SUBLETT, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 63 F. 3d 926.

No. 95–6651. MCGINLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1426.

No. 95–6658. HUGLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 550.

No. 95–6661. RILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 54 F. 3d 709.

No. 95–6663. WILHIKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 469.

No. 95–195. WINDHAM ET AL. *v.* FIRST GIBRALTAR BANK, F. S. B. C. A. 10th Cir. Motion of Federal Deposit Insurance Corporation as Manager of the FSLIC Resolution Fund to be substituted for First Gibraltar Bank as respondent granted. Certiorari denied. Reported below: 53 F. 3d 342.

No. 95–656. CANADIAN GENERAL INSURANCE CO. *v.* DOMTAR, INC. Sup. Ct. Minn. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 533 N. W. 2d 25.

No. 95–5807 (A–475). ASAY ET AL. *v.* FLORIDA PAROLE COMMISSION ET AL. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 649 So. 2d 859.

No. 95–6951 (A–477). WHITE *v.* FLORIDA; and WHITE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 664 So. 2d 242 (first judgment); 663 So. 2d 1324 (second judgment).

No. 95–6952 (A–478). WHITE *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 70 F. 3d 1198.

Rehearing Denied

No. 94–1419. WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY *v.* BARTHOLOMEW, *ante*, p. 1;

No. 94–9214. WEATHERFORD *v.* LECUREUX, WARDEN, ET AL., *ante*, p. 827;

No. 94–9305. JEFFRIES *v.* METRO-MARK, INC., *ante*, p. 830;

No. 94–9339. HEATHERLY *v.* WITKOWSKI, WARDEN, ET AL., *ante*, p. 831;

No. 94–9372. BENALLY *v.* UNITED STATES, *ante*, p. 826;

No. 94–9429. PERKOVIC ET AL. *v.* WEST PENN ABSTRACT CO. ET AL., *ante*, p. 835;

No. 94–9478. RAMPERSAD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 837;

No. 94–9514. TINSLEY *v.* UNITED STATES, *ante*, p. 839;

No. 94–9529. PERTSONI *v.* VASQUEZ, WARDEN, *ante*, p. 840;

No. 94–9607. CONLEE *v.* UNITED STATES, *ante*, p. 845;

No. 94–9696. FAIN *v.* BORG, WARDEN, ET AL., *ante*, p. 850;

No. 94–9749. IN RE VINCENT, *ante*, p. 805;

No. 94–9761. MACRI *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL., *ante*, p. 854;

No. 95–275. COEUR D'ALENE TRIBE *v.* IDAHO, *ante*, p. 916;

No. 95–305. PLAISANCE *v.* TRAVELERS INSURANCE CO. ET AL., *ante*, p. 931;

No. 95–307. DORMAN ET UX. *v.* JONES ET AL., *ante*, p. 931;

No. 95–308. PALM BEACH COUNTY ET AL. *v.* WEST PENINSULAR TITLE CO. ET AL., *ante*, p. 932;

No. 95–5092. MALDONADO *v.* UNITED STATES, *ante*, p. 876;

No. 95–5294. MCCULLOUGH *v.* BURNETT, CIRCUIT JUDGE, CRAIGHEAD COUNTY, ARKANSAS, *ante*, p. 887;

No. 95–5509. WASHINGTON *v.* ALABAMA, *ante*, p. 899;

No. 95–5587. STOW *v.* MARSHALL, SUPERINTENDENT, NORTH CENTRAL CORRECTIONAL INSTITUTION, ET AL., *ante*, p. 933;

No. 95–5590. KITSOS *v.* REVIEW BOARD OF THE ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION, *ante*, p. 921;

No. 95–5593. MURDOCK *v.* UNITED STATES, *ante*, p. 901;
No. 95–5656. SWEENEY *v.* UNITED STATES, *ante*, p. 934;
No. 95–5659. KNIGHT *v.* INTERMARINE, U. S. A., *ante*, p. 934;
No. 95–5675. IN RE HEMMERLE, *ante*, p. 929;
No. 95–5678. DEDES *v.* PAGE ET AL., *ante*, p. 934;
No. 95–5772. CHIA *v.* UNITED STATES ET AL., *ante*, p. 935;
No. 95–5833. IN RE SMITH, *ante*, p. 942;
No. 95–5984. IN RE FRANKLIN, *ante*, p. 929;
No. 95–6038. IN RE ULLRICH, *ante*, p. 929;
No. 95–6039. IN RE WALKER, *ante*, p. 929;
No. 95–6040. IN RE WOHLGEMUTH, *ante*, p. 929;
No. 95–6046. IN RE JEROLD, *ante*, p. 929;
No. 95–6047. IN RE KIRK, *ante*, p. 929;
No. 95–6052. IN RE RENDERMAN, *ante*, p. 929;
No. 95–6053. IN RE SANDLIN, *ante*, p. 929;
No. 95–6054. IN RE SEAMAN, *ante*, p. 929;
No. 95–6055. IN RE PARKER, *ante*, p. 929;
No. 95–6056. IN RE PAYNE, *ante*, p. 929;
No. 95–6057. IN RE SIERRA, *ante*, p. 929;
No. 95–6060. IN RE GOLINI, *ante*, p. 929;
No. 95–6061. IN RE GAUTHIER, *ante*, p. 929;
No. 95–6062. IN RE GARRETT, *ante*, p. 929;
No. 95–6063. IN RE HARPSTER, *ante*, p. 929;
No. 95–6065. IN RE DUTCHER, *ante*, p. 929;
No. 95–6203. IN RE BONTY, *ante*, p. 941;
No. 95–6223. IN RE CAVAN, *ante*, p. 941;
No. 95–6230. IN RE RODRIGUEZ, *ante*, p. 941;
No. 95–6235. IN RE MONCRIEF, *ante*, p. 941;
No. 95–6244. IN RE HARRIS, *ante*, p. 941;
No. 95–6245. IN RE GRASMICK, *ante*, p. 941;
No. 95–6258. IN RE WESLEY, *ante*, p. 942;
No. 95–6300. IN RE WHEELER, *ante*, p. 942; and
No. 95–6303. IN RE SHEPHERD, *ante*, p. 942. Petitions for rehearing denied.

No. 95–51. DILLON *v.* TENNESSEE, *ante*, p. 863;
No. 95–149. PIPKINS *v.* NEVADA STATE BAR, *ante*, p. 867;
No. 95–212. FRED *v.* WACKENHUT CORP. ET AL., *ante*, p. 870; and

No. 95–348. OLSEN *v.* PALEY ET AL., *ante*, p. 917. Motions of petitioners for leave to proceed further herein *in forma pauperis* granted. Petitions for rehearing denied.

DECEMBER 5, 1995

Dismissal Under Rule 46

No. 95–6132. THOMAS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari dismissed under this Court's Rule 46. Reported below: 903 P. 2d 328.

Certiorari Denied

No. 95–6978 (A–485). ATKINS *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

No. 95–6983 (A–463). O'NEAL *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 73 F. 3d 169.

DECEMBER 8, 1995

Probable Jurisdiction Postponed

No. 95–299. ARIZONA *v.* RENO, ATTORNEY GENERAL, ET AL. Appeal from D. C. D. C. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Brief of appellant is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 19, 1996. Brief of appellees is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 16, 1996. This Court's Rule 29.2 does not apply. Reported below: 887 F. Supp. 318.

Certiorari Granted

No. 95–191. O'HARE TRUCK SERVICE, INC., ET AL. *v.* CITY OF NORTHLAKE ET AL. C. A. 7th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon oppos-

ing counsel on or before 3 p.m., Friday, January 19, 1996. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 16, 1996. This Court's Rule 29.2 does not apply. Reported below: 47 F. 3d 883.

No. 95–388. BROWN ET AL. *v.* PRO FOOTBALL, INC., DBA WASHINGTON REDSKINS, ET AL. C. A. D. C. Cir. Motions of Screen Actors Guild, Inc., et al., Major League Baseball Players Association, and National Hockey League Players et al. for leave to file briefs as *amici curiae* granted. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 19, 1996. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 16, 1996. This Court's Rule 29.2 does not apply. Reported below: 50 F. 3d 1041.

No. 95–566. MONTANA *v.* EGELHOFF. Sup. Ct. Mont. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 19, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 16, 1996. This Court's Rule 29.2 does not apply. Reported below: 272 Mont. 114, 900 P. 2d 260.

No. 95–591. UNITED STATES *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. Fed. Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, January 19, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 16, 1996. This Court's Rule 29.2 does not apply. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 59 F. 3d 1234.

DECEMBER 11, 1995

Affirmed on Appeal

No. 95–177. BROOKS ET AL. *v.* GEORGIA ET AL. Affirmed on appeal from D. C. D. C. JUSTICE STEVENS, JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER would vacate the April 4, 1995, District Court dismissal order and remand the case for

further consideration in light of the United States' withdrawal of its appeal.

Certiorari Granted—Vacated and Remanded

No. 94–1412. FUENTES *v.* UNITED STATES. C. A. 9th Cir. Petition for rehearing granted, and the order entered May 30, 1995 [515 U. S. 1102], denying the petition for writ of certiorari is vacated. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 37 F. 3d 565.

No. 94–1432. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 37 F. 3d 565.

No. 94–7820. JONES *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 28 F. 3d 1574.

No. 94–8607. ARROYO *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 48 F. 3d 1213.

No. 94–8730. BAENA-GABRIEL *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 46 F. 3d 1146.

No. 94–8893. PEREZ-VALDEZ *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 46 F. 3d 1146.

No. 94–8765. JAMES *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for fur-

ther consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 40 F. 3d 850.

No. 94–8811. HAWTHORNE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 45 F. 3d 428.

No. 94–8972. ESTRADA *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 45 F. 3d 1215.

No. 94–9004. BRAWNER *v.* UNITED STATES. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 38 F. 3d 609.

No. 94–9022. MORTON *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 43 F. 3d 677.

No. 94–9127. ROBINSON *v.* UNITED STATES. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 47 F. 3d 440.

No. 94–9365. OLSEN *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 48 F. 3d 534.

No. 94–9648. WILCOX *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 48 F. 3d 1226.

No. 95–190. KNAPP ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *United States* v. *Gaudin*, 515 U. S. 506 (1995). Reported below: 52 F. 3d 335.

No. 95–5200. GRANTHAM *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 39 F. 3d 325.

No. 95–5419. ROSS *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 53 F. 3d 332.

No. 95–5473. BROWN *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 55 F. 3d 637.

No. 95–5572. BONNER *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 54 F. 3d 777.

No. 95–5822. MARIETTE *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 57 F. 3d 1064.

No. 95–5827. LANIER *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 57 F. 3d 1062.

Miscellaneous Orders

No. A–410. FIRST NATIONAL BANK & TRUST, WIBAUX, MONTANA, ET AL. *v.* COMPTROLLER OF THE CURRENCY. C. A. 9th

Cir. Application for stay, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. D–1586. IN RE DISBARMENT OF GLASSMAN. Disbarment entered. [For earlier order herein, see 515 U. S. 1185.]

No. D–1591. IN RE DISBARMENT OF ZOCCOLA. Robert F. Zoccola, of Carmel, Ind., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on October 30, 1995 [*ante*, p. 939], is discharged.

No. D–1622. IN RE DISBARMENT OF LYNCH. James Edward Lynch, of Washington Crossing, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1623. IN RE DISBARMENT OF MYERS. Donald Myers, of Elizabeth, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1624. IN RE DISBARMENT OF WEISS. Howard Jesse Weiss, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–27. BAULDWIN *v.* RESOLUTION TRUST CORPORATION ET AL.;

No. M–28. PEREZ *v.* MARSHALL ET AL.; and

No. M–29. CRUZ *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 105, Orig. KANSAS *v.* COLORADO. Motion of the Special Master for fees and reimbursement of expenses for the period August 1, 1994, through November 1, 1995, granted, and the Special Master is awarded a total of $39,132.75 to be paid as follows: for the period August 1, 1994, through July 31, 1995, a total of $21,518.19 to be paid 40% by Kansas, 40% by Colorado, and 20% by the United States; for the period August 1 through November

1, 1995, a total of $17,614.56 to be paid equally by Kansas and Colorado. [For earlier decision herein, see, *e. g.*, 514 U. S. 673.]

No. 108, Orig. NEBRASKA *v.* WYOMING ET AL. Motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $71,399 for the period October 1, 1994, through November 17, 1995, to be paid as follows: 30% by Nebraska, 30% by Wyoming, 15% by Colorado, and 25% by the United States. [For earlier decision herein, see, *e. g.*, 515 U. S. 1.]

No. 120, Orig. NEW JERSEY *v.* NEW YORK. Motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $81,649.50 for the period June 1 through November 17, 1995, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 515 U. S. 1130.]

No. 121, Orig. LOUISIANA *v.* MISSISSIPPI ET AL. Motion of the Special Master for allowance of fees and disbursements granted, and the Special Master is awarded a total of $156,577.09 to be paid in full by Louisiana. [For earlier decision herein, see, *e. g.*, *ante*, p. 122.]

No. 94–1614. WISCONSIN *v.* CITY OF NEW YORK ET AL.;
No. 94–1631. OKLAHOMA *v.* CITY OF NEW YORK ET AL.; and
No. 94–1985. DEPARTMENT OF COMMERCE ET AL. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. [Certiorari granted, 515 U. S. 1190.] Motion of Oklahoma and Wisconsin for divided argument granted in part, and the time is divided as follows: the Solicitor General, 20 minutes; Wisconsin, 10 minutes; respondents, 30 minutes. Request for additional time for oral argument denied.

No. 94–1664. KOON *v.* UNITED STATES; and
No. 94–8842. POWELL *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, 515 U. S. 1190.] Motion of petitioner Stacey Koon for divided argument denied. Motion of petitioner Laurence Powell for divided argument granted, and the time is divided as follows: petitioner Koon, 15 minutes; petitioner Powell, 15 minutes.

No. 95–737. ROYCE LABORATORIES, INC. *v.* BRISTOL-MYERS SQUIBB CO. ET AL. C. A. Fed. Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied. JUS-

TICE O'CONNOR took no part in the consideration or decision of this motion.

No. 95–5207. COOPER *v.* OKLAHOMA. Ct. Crim. App. Okla. [Certiorari granted, *ante*, p. 910.] Motion of National Association of Criminal Defense Lawyers for leave to file a brief as *amicus curiae* granted.

No. 95–6383. SIMS *v.* BARKLEY, SUPERINTENDENT, RIVERVIEW CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until January 2, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33 of the Rules of this Court.

No. 95–6371. IN RE WILLIAMS; and
No. 95–6644. IN RE SOLIMINE. Petitions for writs of mandamus denied.

Certiorari Denied

No. 94–2053. NELSON ET AL. *v.* MURPHY, ACTING DIRECTOR, DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES OF ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 44 F. 3d 497.

No. 95–179. MAYORGA-PEREZ *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 15.

No. 95–211. QUINN ET AL. *v.* PITOFSKY, CHAIRMAN, FEDERAL TRADE COMMISSION, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 50 F. 3d 1096.

No. 95–226. HAVERSAT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 53 F. 3d 335.

No. 95–349. SIGUEL *v.* ALLSTATE LIFE INSURANCE CO. C. A. 1st Cir. Certiorari denied. Reported below: 48 F. 3d 1211.

No. 95–385. BRAM *v.* CITY OF CLEVELAND ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 71 Ohio St. 3d 1218, 645 N. E. 2d 732.

No. 95–422. O'NEILL ET AL. *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 677.

No. 95–425. PRO-ECO, INC. *v.* BOARD OF COMMISSIONERS OF JAY COUNTY, INDIANA. C. A. 7th Cir. Certiorari denied. Reported below: 57 F. 3d 505.

No. 95–426. DENNEY *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 28 Cal. App. 4th 1251, 34 Cal. Rptr. 2d 188.

No. 95–518. IZUMI SEIMITSU KOGYO KABUSHIKI KAISHA *v.* U. S. PHILIPS CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 55 F. 3d 592.

No. 95–525. UNITED STATES *v.* TURECAMO OF SAVANNAH, INC. C. A. 11th Cir. Certiorari denied. Reported below: 36 F. 3d 1083.

No. 95–543. CLARK *v.* FANCHER ET AL. Sup. Ct. Ala. Certiorari denied.

No. 95–570. AFRICAN ENTERPRISE, INC., ET AL. *v.* SCHOLES, AS RECEIVER FOR DOUGLAS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 56 F. 3d 750.

No. 95–574. OLIVO *v.* MAPP. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1067.

No. 95–575. RIGGAN ET AL. *v.* CITY OF SAINT PAUL, SAINT PAUL ISLAND, ALASKA. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 339.

No. 95–577. CITY OF SANTA ANA ET AL. *v.* LAMBERT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 134.

No. 95–594. ST. PAUL FIRE & MARINE INSURANCE CO. *v.* HOUSTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 55 F. 3d 1420.

No. 95–598. STOUTENBOROUGH ET AL. *v.* NATIONAL FOOTBALL LEAGUE, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 580.

No. 95–602. WATSON *v.* TREPEL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1079.

No. 95–604. LONG COVE CLUB ASSOCIATES, L. P. *v.* TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 319 S. C. 30, 458 S. E. 2d 757.

No. 95–605. OKLAHOMA ASSOCIATION FOR EQUITABLE TAXATION *v.* CITY OF OKLAHOMA CITY. Sup. Ct. Okla. Certiorari denied. Reported below: 901 P. 2d 800.

No. 95–612. KIMPEL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 665 So. 2d 990.

No. 95–623. WALKER *v.* INDIANA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 59 F. 3d 173.

No. 95–629. HEGARTY, PERSONAL REPRESENTATIVE OF THE ESTATE OF HEGARTY, DECEASED *v.* WRIGHT ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 53 F. 3d 1367.

No. 95–634. LOVELL *v.* PLANTERS BANK & TRUST COMPANY OF CLAIBORNE PARISH; and LOVELL *v.* NEWELL ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–639. FLINN *v.* PLUMMER. C. A. 11th Cir. Certiorari denied.

No. 95–686. HEGLER *v.* BORG, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 50 F. 3d 1472.

No. 95–703. CITIZENS ASSOCIATION FOR SOUND ENERGY *v.* BOLTZ ET UX. Ct. App. Tex., 7th Dist. Certiorari denied. Reported below: 886 S. W. 2d 283.

No. 95–732. WILLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 57 F. 3d 1374.

No. 95–736. ROLLER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 264.

No. 95–5816. FUENTES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 52 F. 3d 331.

No. 95–5927. KEISER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 847.

No. 95–6309. NONNETTE *v.* PRUNTY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6311. AURELIA N. *v.* SANTA CLARA COUNTY DEPARTMENT OF FAMILY SERVICES. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 95–6314. WILLIAMS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 321 Ark. 344, 902 S. W. 2d 767.

No. 95–6321. LOVE *v.* WHITLEY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 323.

No. 95–6335. BURNSIDE *v.* LATTIMORE ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–6336. BOGAN *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–6337. BRYANT *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 820.

No. 95–6338. QUINNIEY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 213 App. Div. 2d 1069, 625 N. Y. S. 2d 984.

No. 95–6341. LYLE *v.* RICHARDSON. C. A. 6th Cir. Certiorari denied.

No. 95–6347. GORDON *v.* PEORIA SCHOOL DISTRICT 150 ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 905.

No. 95–6350. HARRISON *v.* OKLAHOMA ET AL. Ct. Crim. App. Okla. Certiorari denied.

No. 95–6351. PAYNE *v.* LOVE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON. C. A. 3d Cir. Certiorari denied.

No. 95–6352. JENKINS *v.* MCKUNE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 66 F. 3d 338.

No. 95–6365. NELSON *v.* CASWELL. C. A. 6th Cir. Certiorari denied.

No. 95–6366. NAIL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 95–6372. SUTTLES *v.* HIGHTOWER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–6376. BREEDLOVE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 655 So. 2d 74.

No. 95–6390. SPEARS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 900 P. 2d 431.

No. 95–6431. BROWN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 902 S. W. 2d 278.

No. 95–6448. FERENC *v.* REINOSA ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–6507. MAYES *v.* NEWBERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–6550. MILLS *v.* JONES, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 396.

No. 95–6557. SINGLETARY *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 824.

No. 95–6565. SO-FINE *v.* MORTON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–6569. WILKERSON *v.* MOSLEY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1389.

No. 95–6587. HAMBRICK *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–6664. WOODS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 314.

No. 95–6666. RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1243.

No. 95–6668. HOOD *v.* PHILLIPS, DIRECTOR, NORTH CAROLINA DIVISION OF PRISONS. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 822.

No. 95–6671. HILL *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1417.

No. 95–6672. KEY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 62 F. 3d 424.

No. 95–6674. ANGEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 313.

No. 95–6676. ZAJAC *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 145.

No. 95–6678. BISHOP *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 569.

No. 95–6681. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 63 F. 3d 1159.

No. 95–6682. ROBERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 914.

No. 95–6686. WHITIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1418.

No. 95–6691. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 321.

No. 95–6692. BATTISTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 313.

No. 95–6694. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 183.

No. 95–6695. JOHNSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 826.

No. 95–6696. MATTHEWS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1426.

No. 95–6730. NELSON *v.* MCKINNA, SUPERINTENDENT, COLORADO TERRITORIAL CORRECTIONAL FACILITY. C. A. 10th Cir. Certiorari denied. Reported below: 68 F. 3d 484.

No. 95–6757. PALACIOS-BASTIDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 322.

No. 95–393. HELLER *v.* BOWMAN. Sup. Jud. Ct. Mass. Motion of Association for Union Democracy for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 420 Mass. 517, 651 N. E. 2d 369.

No. 95–616. CALDERON, WARDEN, ET AL. *v.* PHILLIPS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma*

pauperis granted. Certiorari denied. Reported below: 56 F. 3d 1030.

No. 95–633. MICHIGAN *v.* SANDERS. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 95–6834 (A–456). BRIDDLE *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 63 F. 3d 364.

Rehearing Granted. (See No. 94–1412, *supra*, at 1022.)

Rehearing Denied

No. 94–9227. LAPSLEY *v.* NORTHERN INDIANA PUBLIC SERVICE CO., *ante*, p. 828;

No. 94–9253. IN RE SHEEHY ET UX., *ante*, p. 805;

No. 94–9613. WASHINGTON *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 845;

No. 94–9783. FELIX-SANTOS *v.* UNITED STATES, *ante*, p. 856;

No. 95–223. CINCINNATI INSURANCE CO. *v.* ORANGEBURG SAUSAGE CO., *ante*, p. 928;

No. 95–312. ROUSSIN *v.* MISSOURI, *ante*, p. 917;

No. 95–333. JULIEN *v.* TEXAS ET AL., *ante*, p. 932;

No. 95–406. IN RE DANKO, *ante*, p. 941;

No. 95–5145. MYERS *v.* UNITED STATES, *ante*, p. 879;

No. 95–5191. THIERMAN *v.* THIERMAN ET AL., *ante*, p. 882;

No. 95–5282. BERGMANN *v.* MCCAUGHTRY, WARDEN, ET AL., *ante*, p. 887;

No. 95–5510. STEWART *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 899;

No. 95–5585. CRAWFORD *v.* GARNER, WARDEN, ET AL., *ante*, p. 921;

No. 95–5773. OSBORNE *v.* MONTGOMERY ENGINEERING CO. ET AL., *ante*, p. 905;

No. 95–5796. GRAHAM *v.* HANNIGAN, WARDEN, ET AL., *ante*, p. 949;

No. 95–5933. KENT *v.* REICH, SECRETARY OF LABOR, *ante*, p. 967;

No. 95–6113. KIDSTON *v.* STIBBARDS ET AL., *ante*, p. 952;
No. 95–6204. IN RE BONTA, *ante*, p. 941;
No. 95–6236. IN RE LANZON, *ante*, p. 941;
No. 95–6237. IN RE JORY, *ante*, p. 941;
No. 95–6243. IN RE DEERE, *ante*, p. 941;
No. 95–6257. IN RE WALKER, *ante*, p. 942;
No. 95–6301. IN RE SON VAN HOANG, *ante*, p. 942;
No. 95–6305. IN RE LANE, *ante*, p. 942; and
No. 95–6306. IN RE MAIDA, *ante*, p. 942. Petitions for rehearing denied.

No. 94–9755. SANBORN *v.* KENTUCKY, *ante*, p. 854. Motion for leave to file petition for rehearing denied.

DECEMBER 12, 1995

Certiorari Denied

No. 95–7084 (A–508). BRIDDLE *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 77 F. 3d 473.

DECEMBER 13, 1995

Miscellaneous Order

No. A–492 (95–6510). GRAY *v.* NETHERLAND, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted pending disposition by this Court of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the sending down of the judgment of this Court.

DECEMBER 20, 1995

Miscellaneous Order

No. 94–1837. BARNETT BANK OF MARION COUNTY, N. A. *v.* NELSON, FLORIDA INSURANCE COMMISSIONER, ET AL. C. A. 11th Cir. [Certiorari granted *sub nom. Barnett Bank of Marion*

County, N. A. v. *Gallagher*, 515 U. S. 1190.] Motion of respondents for divided argument granted.

DECEMBER 29, 1995

Dismissals Under Rule 46

No. 95–1002. HANNA ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 3d Cir. Certiorari as to Question II dismissed under this Court's Rule 46.1. Reported below: 58 F. 3d 908.

No. 94–2104. LIBERTY NATIONAL LIFE INSURANCE CO. *v.* MCALLISTER. Sup. Ct. Ala. Certiorari dismissed under this Court's Rule 46. Reported below: 675 So. 2d 1292.

JANUARY 2, 1996

Miscellaneous Order

No. 95–992. TURNER BROADCASTING SYSTEM, INC., ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. Appeal from D. C. D. C. Motion of appellants to expedite consideration of jurisdictional statement denied.

JANUARY 3, 1996

Certiorari Denied

No. 95–7283 (A–548). CORRELL *v.* JABE, WARDEN. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 63 F. 3d 1279.

JANUARY 4, 1996

Miscellaneous Orders

No. 94–1614. WISCONSIN *v.* CITY OF NEW YORK ET AL.;

No. 94–1631. OKLAHOMA *v.* CITY OF NEW YORK ET AL.; and

No. 94–1985. DEPARTMENT OF COMMERCE ET AL. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. [Certiorari granted, 515 U. S. 1190.] Motion of the Solicitor General to dispense temporarily with printing in these and other cases granted pending renewal of the Department of Justice's appropriations and contract authority.

No. 95–1028. UNITED STATES *v.* FADEM ET AL. C. A. 9th Cir. Motion of the Solicitor General to dispense temporarily with printing in this case granted pending renewal of the Department of Justice's appropriations and contract authority.

JANUARY 5, 1996

Dismissal Under Rule 46

No. 95–892. ALASKA *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1.

Certiorari Granted

No. 95–365. LANE *v.* PENA, SECRETARY OF TRANSPORTATION, ET AL. C. A. D. C. Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 16, 1996. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 15, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply.

No. 95–489. COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE ET AL. *v.* FEDERAL ELECTION COMMISSION. C. A. 10th Cir. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 16, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 15, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 59 F. 3d 1015.

No. 95–559. DOCTOR'S ASSOCIATES, INC., ET AL. *v.* CASAROTTO ET UX. Sup. Ct. Mont. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 16, 1996. Brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 15, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 274 Mont. 3, 901 P. 2d 596.

No. 95–5841. WHREN ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Motion of petitioners for leave to proceed *in forma pauperis*

granted. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 16, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 15, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 53 F. 3d 371.

No. 95–6510. GRAY *v.* NETHERLAND, WARDEN. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Questions 1 and 2 presented by the petition. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 16, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 15, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 58 F. 3d 59.

JANUARY 8, 1996

Certiorari Granted—Vacated and Remanded. (See also No. 94–9323, *ante*, p. 163; and No. 94–8988, *ante*, p. 193.)

No. 95–5539. STEPHENS *v.* RUBIN, SECRETARY OF THE TREASURY. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position presently asserted by the Solicitor General in his brief for respondent filed November 8, 1995. Reported below: 47 F. 3d 431.

No. 95–6174. LIBBY *v.* NEVADA. Sup. Ct. Nev. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *J. E. B.* v. *Alabama ex rel. T. B.*, 511 U. S. 127 (1994). Reported below: 109 Nev. 905, 859 P. 2d 1050.

No. 95–6254. VASQUEZ *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137.

Certiorari Dismissed

No. 95–717. MAHALEK, INDIVIDUALLY AND AS THE HEIR OF KOLE *v.* KOREAN AIR LINES, CO., LTD. C. A. 9th Cir. Certiorari before judgment dismissed for want of jurisdiction.

Miscellaneous Orders

No. D–1573. IN RE DISBARMENT OF HOPPMANN. Disbarment entered. [For earlier order herein, see 515 U. S. 1172.]

No. D–1589. IN RE DISBARMENT OF MIONE. Disbarment entered. [For earlier order herein, see *ante*, p. 939.]

No. D–1592. IN RE DISBARMENT OF BOUGHTON. Disbarment entered. [For earlier order herein, see *ante*, p. 939.]

No. D–1593. IN RE DISBARMENT OF MCLENITHAN. Disbarment entered. [For earlier order herein, see *ante*, p. 940.]

No. D–1594. IN RE DISBARMENT OF EBERHART. Disbarment entered. [For earlier order herein, see *ante*, p. 940.]

No. D–1595. IN RE DISBARMENT OF EDELMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 940.]

No. D–1625. IN RE DISBARMENT OF GAJEWSKI. Shirley Ferrell Gajewski, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–1626. IN RE DISBARMENT OF SOKOLOW. Craig Bryan Sokolow, of Minersville, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1627. IN RE DISBARMENT OF RICHARDS. James W. Richards, of Rush, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1628. IN RE DISBARMENT OF HILLS. Frank S. Hills, of Sausalito, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring

him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1629. IN RE DISBARMENT OF CLAPP. Edward Dorwart Clapp, of St. Paul, Minn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1630. IN RE DISBARMENT OF TOMS. James Huston Toms, of Hendersonville, N. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1631. IN RE DISBARMENT OF CASSELL. Stuart B. Cassell, of Forest Hills, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–30. HAMPTON *v.* TRANSAMERICA INSURANCE CO. ET AL.;

No. M–33. BLACKMON *v.* ESSARY;

No. M–34. RYAN *v.* DORIA ET AL.;

No. M–35. METALLO *v.* UNITED STATES;

No. M–36. JOHNSON *v.* NAGLE, WARDEN, ET AL.; and

No. M–37. JOHNSON *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. M–31. FISCHBACH *v.* BOARD OF EDUCATION OF TALBOT COUNTY, MARYLAND, ET AL. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. M–32. COOPER *v.* CONNECTICUT. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner denied.

No. 123, Orig. CORRINET *v.* BOUTROS GHALI, SECRETARY-GENERAL OF THE UNITED NATIONS. Motion for leave to file bill of complaint denied.

No. 94–1664. KOON *v.* UNITED STATES; and

No. 94–8842. POWELL *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, 515 U. S. 1190.] Motion of counsel for petitioner

Powell to reschedule oral argument in these cases set for January 9, 1996, granted. Oral argument in No. 94–1966, *Loving* v. *United States* [certiorari granted, 515 U. S. 1191], will be heard at 11 a.m., Tuesday, January 9, 1996.

No. 94–1941. UNITED STATES *v.* VIRGINIA ET AL.; and

No. 94–2107. VIRGINIA ET AL. *v.* UNITED STATES. C. A. 4th Cir. [Certiorari granted, *ante*, p. 910.] Motions of Women's Schools Together, Inc., et al. and South Carolina Institute of Leadership for Women for leave to file briefs as *amici curiae* granted. JUSTICE THOMAS took no part in the consideration or decision of these motions.

No. 94–2003. LOTUS DEVELOPMENT CORP. *v.* BORLAND INTERNATIONAL, INC. C. A. 1st Cir. [Certiorari granted, 515 U. S. 1191.] Motions of Howard C. Anawalt and Software Protection Committee of Minnesota Intellectual Property Law Association for leave to file briefs as *amici curiae* granted. JUSTICE STEVENS took no part in the consideration or decision of these motions.

No. 95–83. MEGHRIG ET AL. *v.* KFC WESTERN, INC. C. A. 9th Cir. [Certiorari granted, 515 U. S. 1192.] Motions of Bi-State Development Agency of Missouri-Illinois Metropolitan District and Massachusetts et al. for leave to file briefs as *amici curiae* granted.

No. 95–157. UNITED STATES *v.* ARMSTRONG ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 942.] Motion of Criminal Justice Legal Foundation for leave to file a brief as *amicus curiae* granted.

No. 95–323. UNITED STATES *v.* NOLAND, TRUSTEE FOR DEBTOR FIRST TRUCK LINES, INC. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1005.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 95–325. UNITED STATES *v.* REORGANIZED CF&I FABRICATORS OF UTAH, INC., ET AL. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1005.] Motion of the Solicitor General to dispense with printing the joint appendix granted.

No. 95–354. O'CONNOR *v.* CONSOLIDATED COIN CATERERS CORP. C. A. 4th Cir. [Certiorari granted, *ante*, p. 973.] Motion of petitioner to dispense with printing the joint appendix granted.

No. 95–591. UNITED STATES *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 1021.] Motion of the Solicitor General to dispense with printing the joint appendix granted. JUSTICE STEVENS took no part in the consideration or decision of this motion.

No. 95–638. BANKERS TRUST CO. *v.* PROCTER & GAMBLE CO. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 95–6503. IN RE HOLCOMB; and

No. 95–7070. IN RE BROWN. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 29, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 95–6821. IN RE EVERHART;

No. 95–6822. IN RE GISEBURT;

No. 95–6823. IN RE NEAL;

No. 95–6912. IN RE MAGEE;

No. 95–6914. IN RE MOYER;

No. 95–6994. IN RE CHATFIELD; and

No. 95–7074. IN RE MAGEE. Petitions for writs of habeas corpus denied.

No. 95–625. IN RE HOLYWELL CORP. ET AL.;

No. 95–678. IN RE LUCILLE;

No. 95–6445. IN RE HOLSTON;

No. 95–6597. IN RE KLOEHN;

No. 95–6693. IN RE TAMAYO; and

No. 95–6946. IN RE CARTWRIGHT. Petitions for writs of mandamus denied.

Certiorari Denied

No. 94–2050. TYSON *v.* TRIGG, SUPERINTENDENT, INDIANA YOUTH CENTER, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 50 F. 3d 436.

No. 95–254. AMERICAN LEGION ET AL. *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 54 F. 3d 789.

No. 95–277. POWER *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 420 Mass. 410, 650 N. E. 2d 87.

No. 95–279. ATKINS *v.* OREGON DEPARTMENT OF REVENUE. Sup. Ct. Ore. Certiorari denied. Reported below: 320 Ore. 713, 894 P. 2d 449.

No. 95–289. WILLIAMS *v.* UNITED STATES;
No. 95–290. ROSS *v.* UNITED STATES;
No. 95–6402. LO *v.* UNITED STATES; and
No. 95–6677. KHALIL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 53 F. 3d 507.

No. 95–371. DOUGLAS COUNTY, OREGON *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1495.

No. 95–382. TODD SHIPYARDS CORP. ET AL. *v.* HOKE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 333.

No. 95–394. DROZ *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 48 F. 3d 1120.

No. 95–397. PENNY ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 58 F. 3d 1181.

No. 95–414. CIG EXPLORATION, INC. *v.* UTAH STATE TAX COMMISSION ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 897 P. 2d 1214.

No. 95–434. EMPLOYERS INSURANCE OF WAUSAU *v.* BROWNER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 52 F. 3d 656.

No. 95–436. MACH-TECH, LTD. PARTNERSHIP ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1241.

No. 95–448. INTERSTATE BRANDS CORP. *v.* REICH, SECRETARY OF LABOR. C. A. 7th Cir. Certiorari denied. Reported below: 57 F. 3d 574.

No. 95–452. CAMPBELL *v.* CAMPBELL ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 898 S. W. 2d 630.

No. 95–457. PERALES, COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, ET AL. *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 48 F. 3d 1305.

No. 95–458. TIFFANY ET AL. *v.* FARM CREDIT BANK OF OMAHA, FKA FEDERAL LAND BANK OF OMAHA, ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 529 N. W. 2d 294.

No. 95–460. HUME *v.* STERLING, INDIVIDUALLY AND IN HIS CAPACITY AS SHELBY COUNTY ASSESSOR OF PROPERTY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 48 F. 3d 1219.

No. 95–463. SALAS *v.* CASELLAS, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1242.

No. 95–471. NORTHERN TELECOM, INC. *v.* ANDERSON; and
No. 95–708. ANDERSON *v.* NORTHERN TELECOM, INC. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 810.

No. 95–491. VAIL *v.* PLAIN DEALER PUBLISHING CO. ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 72 Ohio St. 3d 279, 649 N. E. 2d 182.

No. 95–492. LeMASTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 54 F. 3d 1224.

No. 95–505. ABLANG *v.* RENO, ATTORNEY GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 801.

No. 95–509. PACIFICA FOUNDATION ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and
No. 95–520. ACTION FOR CHILDREN'S TELEVISION ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 58 F. 3d 654.

No. 95–516. SPICER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 57 F. 3d 1152.

No. 95–545. KURTZ *v.* CITY OF NORTH MIAMI. Sup. Ct. Fla. Certiorari denied. Reported below: 653 So. 2d 1025.

No. 95–554. SCARTH ET AL. *v.* NICOR EXPLORATION CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 1341.

No. 95–567. SANTIAGO-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 58 F. 3d 422.

No. 95–568. GRAY *v.* NEW YORK GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 95–587. HARCOURT BRACE JOVANOVICH LEGAL & PROFESSIONAL PUBLICATIONS, INC., ET AL. *v.* MULTISTATE LEGAL STUDIES, INC. C. A. 10th Cir. Certiorari denied. Reported below: 63 F. 3d 1540.

No. 95–590. MERCEDES-BENZ OF NORTH AMERICA, INC. *v.* MIKE SMITH PONTIAC, GMC, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 32 F. 3d 528.

No. 95–596. BERKLEY ET AL. *v.* ITOBA LTD.; and
No. 95–606. LEP GROUP PLC *v.* ITOBA LTD. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 118.

No. 95–608. HOLYWELL CORP. ET AL. *v.* SMITH, INDIVIDUALLY AND AS TRUSTEE OF THE MIAMI CENTER LIQUIDATING TRUST, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 400.

No. 95–613. SARDUY *v.* SOUTHERN BELL TELEPHONE TELEGRAPHIC, INC. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1071.

No. 95–621. WASHINGTON, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WASHINGTON ET UX., DECEASED, ET AL. *v.* CREEL. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1072.

No. 95–624. SOUTHERN GUARANTY INSURANCE COMPANY OF GEORGIA *v.* SOUTHEASTERN EXPRESS SYSTEMS ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 34 Cal. App. 4th 1, 40 Cal. Rptr. 2d 216.

No. 95–628. SABIA, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF BATEMAN, ET AL. *v.* SEMINOLE COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 400.

No. 95–631. BRANDT, ADMINISTRATOR OF THE INVESTMENT PLUS PLAN OF THE SOUTHEAST BANKING CORP. *v.* WEINER

ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1003.

No. 95–632. KERTESZ *v.* PLOTKINS. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–636. NEFF *v.* AMERICAN DAIRY QUEEN CORP. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 1063.

No. 95–643. WALPOLE ET AL. *v.* GREAT AMERICAN INSURANCE COS. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 63.

No. 95–644. ISLAMIC REPUBLIC OF IRAN *v.* MCKESSON CORP. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 52 F. 3d 346.

No. 95–647. SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE ET AL. *v.* SESSIONS, ATTORNEY GENERAL OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1281.

No. 95–648. KOLKER *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 649 So. 2d 250.

No. 95–649. S. DIAMOND ASSOCIATES, INC. *v.* ORIGINAL APPALACHIAN ARTWORKS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 44 F. 3d 925.

No. 95–650. ROBINSON ET AL. *v.* AUDI AKTIENGESELLSCHAFT ET AL.; and ROBINSON ET AL. *v.* VOLKSWAGENWERK AG ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 56 F. 3d 1259 (first judgment) and 1268 (second judgment).

No. 95–651. AHMED, AKA GRESHAM, PERSONAL REPRESENTATIVE OF THE ESTATE OF GRESHAM *v.* NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 165.

No. 95–653. HONDA MOTOR CO. ET AL. *v.* SATCHER; and
No. 95–674. SATCHER *v.* HONDA MOTOR CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1311.

No. 95–665. PHILLIPS *v.* PATAKI, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–666. GOODALL, AN INFANT, BY HIS FATHER AND NEXT FRIEND, GOODALL, ET AL. *v.* STAFFORD COUNTY SCHOOL BOARD. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 168.

No. 95–667. JOHNSON *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 133 Ore. App. 449, 890 P. 2d 1016.

No. 95–670. WESTECH GEAR CORP. *v.* ANZALONE. Sup. Ct. N. J. Certiorari denied. Reported below: 141 N. J. 256, 661 A. 2d 796.

No. 95–671. COLUMBIA CONVALESCENT CENTER, INC., ET AL. *v.* GEORGIA DEPARTMENT OF MEDICAL ASSISTANCE. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 638, 458 S. E. 2d 635.

No. 95–676. GUEVARA *v.* MARITIME OVERSEAS CORP. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1496.

No. 95–677. NICHOLS ET AL. *v.* PAULUCCI ET AL. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 652 So. 2d 389.

No. 95–679. SPIEGEL *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1531.

No. 95–682. WETTA *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 217 Ga. App. 128, 456 S. E. 2d 696.

No. 95–683. PARTIN *v.* FLORIDA COMMISSION ON ETHICS. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 660 So. 2d 720.

No. 95–684. PLOWMAN *v.* MASSAD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 796.

No. 95–688. MICHIGAN SUPERVISORS' OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION ET AL. *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 61 F. 3d 904.

No. 95–689. FIORETTI *v.* MASSACHUSETTS GENERAL LIFE INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1228.

No. 95–691. GLYNN *v.* ROY AL BOAT MANAGEMENT CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1495.

No. 95–692. LAWRENCE INDUSTRIES, INC. *v.* SHARP, TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, ET AL. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 890 S. W. 2d 886.

No. 95–694. IN RE LAMM. Sup. Ct. N. C. Certiorari denied. Reported below: 341 N. C. 196, 458 S. E. 2d 921.

No. 95–697. CROMWELL ET UX. *v.* SECURITIES SERVICE NETWORK, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1418.

No. 95–699. TROSTER *v.* PENNSYLVANIA STATE DEPARTMENT OF CORRECTIONS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 1086.

No. 95–702. ARMENDARIZ *v.* PINKERTON TOBACCO CO. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 144.

No. 95–704. HAMID ET AL. *v.* PRICE WATERHOUSE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 1411.

No. 95–707. SAVANNAH FOODS & INDUSTRIES, INC. *v.* NATIONAL UTILITY SERVICE, INC. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 895.

No. 95–710. BAKER ET AL. *v.* BANK OF BARTLETT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 55 F. 3d 1166.

No. 95–715. 1120 CENTRAL CONDOMINIUMS OWNERS ASSN. ET AL. *v.* CITY OF SEAL BEACH, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 174.

No. 95–718. PENNSYLVANIA *v.* ALBINO. Sup. Ct. Pa. Certiorari denied. Reported below: 541 Pa. 424, 664 A. 2d 84.

No. 95–721. REPUBLIC OF THE PHILIPPINES ET AL. *v.* WALTER FULLER AIRCRAFT SALES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 396.

No. 95–722. HALL *v.* PAOLI ORJALES. Ct. App. P. R. Certiorari denied.

No. 95–723. TINSLEY *v.* TRW INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 659.

No. 95–727. MCCOTTER *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 95–730. COOPER-JOLLEY *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 95–735. PETERS *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 449 Mich. 515, 537 N. W. 2d 160.

No. 95–739. MAGGARD, DECEASED, ET AL. *v.* LESLIE RESOURCES, INC., ET AL. Ct. App. Ky. Certiorari denied.

No. 95–741. SNELLING *v.* CISNEROS, SECRETARY OF HOUSING AND URBAN DEVELOPMENT. C. A. 8th Cir. Certiorari denied. Reported below: 52 F. 3d 330.

No. 95–745. ORTEGA-ACOSTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 635.

No. 95–756. JENKINS *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1242.

No. 95–759. LAMANTIA ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 59 F. 3d 705.

No. 95–762. YU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 66 F. 3d 308.

No. 95–764. COLLINGS ET AL. *v.* LONGVIEW FIBRE CO. C. A. 9th Cir. Certiorari denied. Reported below: 63 F. 3d 828.

No. 95–778. BUCHBINDER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied.

No. 95–784. PODGURSKI *v.* SUFFOLK COUNTY, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–787. AZAR *v.* HAYTER. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 342.

No. 95–794. RHODES *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 287.

No. 95–796. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 464.

No. 95–802. POLLEY ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 63 F. 3d 381.

No. 95–812. NEBEN & STARRETT, INC. *v.* CHARTWELL FINANCIAL CORP. C. A. 9th Cir. Certiorari denied. Reported below: 63 F. 3d 877.

No. 95–832. JENSEN *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 71.

No. 95–833. CUDA ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 395.

No. 95–835. DELGADO ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1357.

No. 95–840. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 470.

No. 95–863. BONITO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 167.

No. 95–870. STARKES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1284 and 1285.

No. 95–871. SHEET METAL WORKERS LOCAL NO. 141 SUPPLEMENTAL UNEMPLOYMENT BENEFIT TRUST FUND *v.* INTERNAL REVENUE SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 245.

No. 95–874. SMITH *v.* LEONARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 834.

No. 95–876. KIRTON *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 38 Conn. App. 914, 659 A. 2d 1237.

No. 95–5128. BURCH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 50 F. 3d 345.

No. 95–5205. JAYSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 322.

No. 95–5582. COMO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 87.

No. 95–5619. CHAMPION *v.* CALIFORNIA; and
No. 95–6264. ROSS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 4th 879, 891 P. 2d 93.

No. 95–5635. HOCK *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 41 F. 3d 1470.

No. 95–5645. STERLING *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 57 F. 3d 451.

No. 95–5671. ELLIOTT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 50 F. 3d 180.

No. 95–5801. HUNT *v.* DEPARTMENT OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 57 F. 3d 1084.

No. 95–5852. REED *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 95–5862. GOUR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 640.

No. 95–5873. MAY ET AL. *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 95–5904. GHAZALEH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 58 F. 3d 240.

No. 95–5929. JENKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1071.

No. 95–5994. CANAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 48 F. 3d 954.

No. 95–6028. GOMEZ-VILLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1199.

No. 95–6059. FLORES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 904 S. W. 2d 129.

No. 95–6097. SCALES *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 655 So. 2d 1326.

No. 95–6098. ST. PIERRE *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 95–6127. WALTERS *v.* ALLSTATE INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1222.

No. 95–6134. PEREZ *v.* UNITED STATES;
No. 95–6475. JACOBS *v.* UNITED STATES; and
No. 95–6500. GALINDO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 F. 3d 901.

No. 95–6139. MASON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 905 S. W. 2d 570.

No. 95–6202. WILLIAMS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 541 Pa. 85, 660 A. 2d 1316.

No. 95–6255. WILSON *v.* CITY OF AKRON, ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 667 So. 2d 750.

No. 95–6263. ROSS *v.* CALDERON, WARDEN. Sup. Ct. Cal. Certiorari denied. Reported below: 10 Cal. 4th 184, 892 P. 2d 1287.

No. 95–6285. HIGH *v.* THOMAS, WARDEN, ET AL. Super. Ct. Butts County, Ga. Certiorari denied.

No. 95–6369. WEBSTER *v.* CITY OF AMARILLO, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 464.

No. 95–6373. BONIN *v.* CALDERON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 815.

No. 95–6375. POURZANDVAKIL *v.* HUMPHREY, ATTORNEY GENERAL OF MINNESOTA, ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–6380. YOUNG *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 319 S. C. 33, 459 S. E. 2d 84.

No. 95–6385. ELFAKIR ET UX. *v.* AUTOMOBILE CLUB INSURANCE ASSOCIATES ET AL. Ct. App. Mich. Certiorari denied.

No. 95–6395. OMERNICK *v.* STEGER ET AL. Ct. App. Wis. Certiorari denied. Reported below: 193 Wis. 2d 641, 537 N. W. 2d 435.

No. 95–6403. G. W. B. *v.* J. S. W. ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 658 So. 2d 961.

No. 95–6404. CAESAR *v.* MARSHAL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 337.

No. 95–6412. OGLESBY *v.* GREEN ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 401.

No. 95–6422. SPIEGELMAN *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 95–6429. SLAGLE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 72 Ohio St. 3d 509, 651 N. E. 2d 937.

No. 95–6432. PUDDER *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 95–6434. NELSON *v.* COTTON. C. A. 6th Cir. Certiorari denied.

No. 95–6440. COKER ET AL. *v.* REDICK ET AL. Ct. App. Tenn. Certiorari denied.

No. 95–6441. GONZALES *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 181 Ariz. 502, 892 P. 2d 838.

No. 95–6443. FUENTES *v.* SHANKS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 915.

No. 95–6444. HAY *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 95–6447. GREANY *v.* BARKLEY, SUPERINTENDENT, RIVERVIEW CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–6450. DOLPHIN *v.* STARKMAN. C. A. 7th Cir. Certiorari denied. Reported below: 62 F. 3d 1419.

No. 95–6451. BEDSON *v.* HENDRICKSON, DEPUTY SHERIFF, PASCO COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 400.

No. 95–6453. CRILL *v.* CAPAUL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 910.

No. 95–6455. RODRIGUEZ *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 657 So. 2d 1166.

No. 95–6458. HUBBARD *v.* MICHIGAN BELL TELEPHONE CO. C. A. D. C. Cir. Certiorari denied.

No. 95–6469. SANTIAGO *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 541 Pa. 188, 662 A. 2d 610.

No. 95–6471. SPAZIANO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 660 So. 2d 1363.

No. 95–6472. SAUCIER *v.* ALCEDE, WARDEN, CALCASIEU CORRECTIONAL CENTER. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 392.

No. 95–6473. CELESTINE *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–6478. SALES *v.* CITY OF CONWAY, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 57 F. 3d 1074.

No. 95–6479. SPYBUCK *v.* CHAMPION, ATTORNEY GENERAL OF OKLAHOMA. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 916.

No. 95–6480. SNEED *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–6483. BEELER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 9 Cal. 4th 953, 891 P. 2d 153.

No. 95–6492. GREER *v.* SEARS, ROEBUCK & CO. C. A. 6th Cir. Certiorari denied. Reported below: 54 F. 3d 776.

No. 95–6494. HART *v.* HART. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–6497. BARNER *v.* NEVADA ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6504. UZOWURU *v.* WILLIAMS BROTHERS CONSTRUCTION CO., INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 1042.

No. 95–6505. MCWILLIAMS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 666 So. 2d 90.

No. 95–6506. JANNEH *v.* GAF CORP. C. A. 2d Cir. Certiorari denied.

No. 95–6509. HUNT *v.* NUTH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1327.

No. 95–6516. NOBLES *v.* METROPOLITAN TRANSIT AUTHORITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 394.

No. 95–6517. BALL *v.* GARRETT, JUDGE OF THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA, ET AL. Sup. Ct. Ala. Certiorari denied.

No. 95–6518. WOJNICZ *v.* STEGALL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1418.

No. 95–6526. MYERS *v.* MASSACHUSETTS TRIAL COURT ET AL. App. Ct. Mass. Certiorari denied. Reported below: 38 Mass. App. 1122, 649 N. E. 2d 1143.

No. 95–6536. WHITE *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 95–6541. RAMIREZ *v.* THURMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6546. TROTTIE *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 95–6552. BANKS *v.* HARPER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 43 F. 3d 1477.

No. 95–6558. ROSS *v.* ROCKWELL INTERNATIONAL ROCKETDYNE. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 834.

No. 95–6562. SMITH *v.* VELASQUEZ ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 95–6570. WILLOUGHBY *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 181 Ariz. 530, 892 P. 2d 1319.

No. 95–6571. THOMAS *v.* CARVER, WARDEN, ET AL. Ct. App. Utah. Certiorari denied.

No. 95–6572. PETERSON *v.* MAC INDUSTRIES ET AL. Sup. Ct. Utah. Certiorari denied.

No. 95–6573. HARRINGTON *v.* FAGLEY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 311.

No. 95–6576. MCLAMB *v.* ROBERTS, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 469.

No. 95–6578. SHANNON *v.* HUESZEL. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 466.

No. 95–6579. GLOVER *v.* ROBERTS, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 682.

No. 95–6580. GOSPODARECK *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 666 So. 2d 844.

No. 95–6581. DESMOND *v.* DEPARTMENT OF THE NAVY ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 67 F. 3d 289.

No. 95–6582. ACOSTA *v.* STRACK, SUPERINTENDENT, FISHKILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 95–6583. ARNDT *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 95–6585. ATTWOOD *v.* SANDS ET AL.; and ATTWOOD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–6586. GREEN *v.* CITIZENS BANK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 48 F. 3d 1219.

No. 95–6588. GRUBOR *v.* PENNSYLVANIA ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 168 Pa. Commw. 694, 649 A. 2d 1012.

No. 95–6592. HAM *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–6593. PRICE *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 395.

No. 95–6598. HARRIS *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6599. JACKSON *v.* WEST VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 657.

No. 95–6601. WODKIEWICZ *v.* PATENT AND TRADEMARK OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES. C. A. Fed. Cir. Certiorari denied. Reported below: 66 F. 3d 347.

No. 95–6602. SLOAN *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 54 F. 3d 1371.

No. 95–6603. TURNER *v.* CULLUM, SECRETARY OF VIRGINIA HEALTH AND HUMAN RESOURCES. C. A. D. C. Cir. Certiorari denied. Reported below: 65 F. 3d 962.

No. 95–6604. USKE *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied. Reported below: 56 F. 3d 1375.

No. 95–6609. PADERES *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 61 F. 3d 919.

No. 95–6614. BARNETTE *v.* JONES ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–6617. GETTY *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 95–6618. STARKS-EL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 F. 3d 1267.

No. 95–6620. TRICE *v.* TOOMBS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–6621. CHANDLER *v.* CIRCUIT COURT OF VIRGINIA, CITY OF VIRGINIA BEACH, ET AL. Sup. Ct. Va. Certiorari denied.

No. 95–6623. GENT *v.* GORDON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 61 F. 3d 899.

No. 95–6624. MOSLEY *v.* SHELBY ET AL. C. A. 8th Cir. Certiorari denied.

No. 95–6625. JONES *v.* GILMORE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 64 F. 3d 665.

No. 95–6629. SOLIMINE *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 64 F. 3d 654.

No. 95–6630. WILLIAMS *v.* JABE, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 327.

No. 95–6631. BRADLEY *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 319.

No. 95–6634. FRAZIER *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1389.

No. 95–6645. ROBERSON *v.* RANEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–6647. VEY *v.* COLVILLE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 314.

No. 95–6649. JONES *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 95–6662. COOK *v.* MOYER ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–6665. COLLINS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 72 Ohio St. 3d 1556, 651 N. E. 2d 1013.

No. 95–6667. COX *v.* ROBINSON, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES. Cir. Ct. Anne Arundel County, Md. Certiorari denied.

No. 95–6673. CROWDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 782.

No. 95–6680. TSIMBIDAROS *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–6683. DORSEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 F. 3d 260.

No. 95–6684. GLASS *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 905.

No. 95–6685. OSBORNE *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 66 F. 3d 344.

No. 95–6689. HAYES *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 269 Ill. App. 3d 1140, 685 N. E. 2d 459.

No. 95–6690. CREE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1426.

No. 95–6697. NOBLE *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6706. HIGGINS *v.* CUOMO, FORMER GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–6707. BARNETT *v.* BONAVENTURE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 820.

No. 95–6708. ALEXANDER *v.* FEDERAL BUREAU OF INVESTIGATION. C. A. 9th Cir. Certiorari denied.

No. 95–6712. O'NEILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 182.

No. 95–6713. ROBERTS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1111.

No. 95–6714. O'BRIEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 65.

No. 95–6715. PASSI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 F. 3d 1278.

No. 95–6716. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 110.

No. 95–6717. CONNALLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 183.

No. 95–6719. PARRY *v.* ROSEMEYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG. C. A. 3d Cir. Certiorari denied. Reported below: 64 F. 3d 110.

No. 95–6722. TORRES-SAUCEDO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 68 F. 3d 484.

No. 95–6723. TOMLIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 667.

No. 95–6725. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 667.

No. 95–6727. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 183.

No. 95–6728. JEANISE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 322.

No. 95–6729. MEJIA-CENDEJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 177.

No. 95–6732. MUSCOREIL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 214 App. Div. 2d 953, 626 N. Y. S. 2d 637.

No. 95–6733. KETCHUM *v.* ROSWELL, ARIZONA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 62 F. 3d 1428.

No. 95–6735. DEBARI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 67 F. 3d 312.

No. 95–6736. DONAHUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 182.

No. 95–6738. FAISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 22.

No. 95–6739. FONTENOT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 F. 3d 1429.

No. 95–6740. GOODWIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 340.

No. 95–6743. ORELLANA *v.* KYLE. C. A. 5th Cir. Certiorari denied. Reported below: 65 F. 3d 29.

No. 95–6744. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 1070.

No. 95–6745. BARKSDALE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1532.

No. 95–6749. VANCE *v.* HORN, COMMISSIONER, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 64 F. 3d 119.

No. 95–6750. WOODS *v.* RUNYON, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 664.

No. 95–6752. CREPEAU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 F. 3d 1415.

No. 95–6754. GOMEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 67 F. 3d 1515.

No. 95–6761. TERRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 60 F. 3d 1541.

No. 95–6762. COLLINS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1416.

No. 95–6766. CAAMANO-RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 F. 3d 314.

No. 95–6767. CORREA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 181.

No. 95–6770. OGEA *v.* UNITED STATES; and
No. 95–6780. MILLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 664.

No. 95–6771. SATIZABAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 912.

No. 95–6774. HUBBARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 819.

No. 95–6776. INGRAO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 64 F. 3d 98.

No. 95–6777. TRAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 170.

No. 95–6778. POWELL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 340 N. C. 674, 459 S. E. 2d 219.

No. 95–6781. GRAHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 660.

No. 95–6782. ROMERO CONTRERAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 181.

No. 95–6783. BLACK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 181.

No. 95–6786. TREVINO, AKA ORTIZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 60 F. 3d 333.

No. 95–6789. DWYER *v.* MILLSAPS, DIRECTOR, COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT FOR TRAVIS COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 635.

No. 95–6790. PATTERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 65 F. 3d 68.

No. 95–6792. NELSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 914.

No. 95–6793. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 551.

No. 95–6794. MUNDY *v.* CARITHERS, JUDGE, CIRCUIT COURT OF FLORIDA, FOURTH JUDICIAL CIRCUIT. C. A. 11th Cir. Certiorari denied.

No. 95–6795. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1390.

No. 95–6796. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 851.

No. 95–6797. MANSFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 660.

No. 95–6798. DODGE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 64 F. 3d 670.

No. 95–6800. PORTER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 65 F. 3d 962.

No. 95–6802. ANTONELLI *v.* HURLEY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 95–6804. CLARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 341.

No. 95–6805. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 183.

No. 95–6806. BOWLES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 659.

No. 95–6807. BASCOPE-ZURITA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 68 F. 3d 1057.

No. 95–6808. ALVARADO-SALDIVAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 697.

No. 95–6816. MCLEGGAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 313.

No. 95–6818. MCSWINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 660.

No. 95–6824. LEA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 1018.

No. 95–6827. DAVID *v.* APFEL, LEVY, ZLOTNICK & CO. ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–6828. AHMAD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 396.

No. 95–6835. ABBOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 309.

No. 95–6837. GORDON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 64 F. 3d 281.

No. 95–6839. CLAIBORNE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 62 F. 3d 897.

No. 95–6842. MILES *v.* DORSEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 1459.

No. 95–6843. OBERMEYER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 177.

No. 95–6844. ALDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 659.

No. 95–6849. HART *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 917.

No. 95–6850. CAMPBELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 65 F. 3d 962.

No. 95–6852. HARTZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 660.

No. 95–6853. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 63 F. 3d 766.

No. 95–6854. WIMBERLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 60 F. 3d 281.

No. 95–6855. BEASLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 465.

No. 95–6857. ESCARENO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 69 F. 3d 549.

No. 95–6858. MARSHALL *v.* UNITED STATES; and
No. 95–6939. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 95–6859. DANIELS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 64 F. 3d 311.

No. 95–6862. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 464.

No. 95–6863. INGHAM *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 218.

No. 95–6867. PORTER *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 60 F. 3d 830.

No. 95–6868. RANDOLPH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 64 F. 3d 670.

No. 95–6870. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1111.

No. 95–6871. JEFFERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 340.

No. 95–6872. DIGIROLAMO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 66 F. 3d 544.

No. 95–6873. HINES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 465.

No. 95–6874. FINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 F. 3d 167.

No. 95–6876. ANDRINO-CARILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 F. 3d 922.

No. 95–6877. ARIAS-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 835.

No. 95–6879. HUSTON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 442 Pa. Super. 676, 660 A. 2d 653.

No. 95–6882. LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 465.

No. 95–6883. NELSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 65 F. 3d 169.

No. 95–6888. NWANZE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 F. 3d 167.

No. 95–6890. ORR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 68 F. 3d 1247.

No. 95–6893. CLARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 342.

No. 95–6895. BURRIS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied.

No. 95–6909. DICKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 64 F. 3d 409.

No. 95–6915. MCLAUREN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 323.

No. 95–6916. COFER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1479.

No. 95–6918. GARDNER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 65 F. 3d 82.

No. 95–6920. KESO *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 193 Wis. 2d 638, 537 N. W. 2d 433.

No. 95–6921. REID *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 341.

No. 95–6922. BURNS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 825.

No. 95–6924. CHAPEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 913.

No. 95–6926. GREGORIO MARTINEZ, AKA MARTINEZ ESTRADA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 F. 3d 1398.

No. 95–6933. HARVILCHUCK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 341.

No. 95–6935. HUMPHREY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 66 F. 3d 306.

No. 95–6936. HILL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 664 A. 2d 347.

No. 95–6938. SHEFFEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1419.

No. 95–6940. ONYEJEKWE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 59 F. 3d 164.

No. 95–6942. MCKOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 907.

No. 95–6945. CRAWFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 340.

No. 95–6948. CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1425.

No. 95–6949. LEON-LEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1241.

No. 95–6953. GRESHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 183.

No. 95–6954. GOMEZ-QUINCENO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 340.

No. 95–6956. EVANS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1246.

No. 95–6958. STOKES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 569.

No. 95–6959. PLUMLEE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 F. 3d 1415.

No. 95–6960. SHAFER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 168.

No. 95–6965. CORTEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 67 F. 3d 292.

No. 95–6968. WRIGHT *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO. C. A. 6th Cir. Certiorari denied.

No. 95–6971. ARAIZA-TOVAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 F. 3d 314.

No. 95–6976. MORGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 336.

No. 95–6981. OKOLO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1067.

No. 95–6985. TAYLOR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 122 F. 3d 1057.

No. 95–6989. JOHNSON *v.* MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 657.

No. 95–6991. INGRAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1426.

No. 95–6999. PATCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 124.

No. 95–7001. BURNS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 95–424. TURF LAWNMOWER REPAIR, INC., ET AL. *v.* BERGEN RECORD CORP. ET AL. Sup. Ct. N. J. Motion of New Jersey Press Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 139 N. J. 392, 655 A. 2d 417.

No. 95–524. VORNADO AIR CIRCULATION SYSTEMS, INC. *v.* DURACRAFT CORP. C. A. 10th Cir. Motion of Thomas & Betts Corp. et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 58 F. 3d 1498.

No. 95–617. CURTIS ET AL. *v.* SCHOOL COMMITTEE OF FALMOUTH ET AL. Sup. Jud. Ct. Mass. Motion of Family Research Council et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 420 Mass. 749, 652 N. E. 2d 580.

No. 95–646. CARLSBAD MUNICIPAL SCHOOL DISTRICT ET AL. *v.* DADDOW. Sup. Ct. N. M. Motion of New Mexico Public School Insurance Authority for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 120 N. M. 97, 898 P. 2d 1235.

No. 95–659. BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER *v.* ANTWINE. C. A. 8th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 54 F. 3d 1357.

No. 95–660. NOWICKI *v.* COOPER, ASSISTANT FAMILY COURT COMMISSIONER, MILWAUKEE COUNTY, WISCONSIN. C. A. 7th Cir. Motion of petitioner to strike brief in opposition denied. Certiorari denied. Reported below: 56 F. 3d 782.

No. 95–669. AMERICAN CYANAMID CO. *v.* GORTON ET AL. Sup. Ct. Wis. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 194 Wis. 2d 203, 533 N. W. 2d 746.

No. 95–731. AMERICAN HOME PRODUCTS CORP. ET AL. *v.* JOHNSON & JOHNSON ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 60 F. 3d 843.

No. 95–6595. DOE *v.* HARVARD UNIVERSITY. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 37 F. 3d 1484.

No. 95–737. ROYCE LABORATORIES, INC. *v.* BRISTOL-MYERS SQUIBB CO. ET AL. C. A. Fed. Cir. Motion of National Association of Pharmaceutical Manufacturers et al. for leave to file a brief

as *amici curiae* granted. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this motion and this petition. Reported below: 69 F. 3d 1130.

No. 95–829. PLANNING RESEARCH CORP., INC. *v.* UNITED STATES EX REL. SCHWEDT. C. A. D. C. Cir. Motion of National Security Industrial Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 59 F. 3d 196.

No. 95–5913. BROWN *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to file amended petition for writ of certiorari denied. Certiorari denied. Reported below: 52 F. 3d 415.

No. 95–6542. NICHOLS *v.* MCELVEEN ET AL. C. A. 5th Cir. Motion of petitioner to amend petition for writ of certiorari denied. Certiorari denied. Reported below: 52 F. 3d 1067.

No. 95–6903. BRANCH *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner to amend petition for writ of certiorari denied. Certiorari denied.

No. 95–6460 (A–517). FANTA *v.* CITY OF SEATTLE ET AL. C. A. 9th Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. 94–9219. GOLDWITZ *v.* CHAUVIN INTERNATIONAL LTD., *ante*, p. 828;

No. 94–9341. GLOVER *v.* LEONARDO, SUPERINTENDENT, GREAT MEADOW CORRECTIONAL FACILITY, *ante*, p. 831;

No. 94–9740. SCEIFERS *v.* TRIGG, SUPERINTENDENT, INDIANA YOUTH CENTER, *ante*, p. 853;

No. 95–367. KELES *v.* NEW YORK UNIVERSITY ET AL., *ante*, p. 943;

No. 95–517. TOURON *v.* METROPOLITAN DADE COUNTY ET AL., *ante*, p. 945;

No. 95–558. THOMPSON *v.* UNITED STATES ET AL., *ante*, p. 976;

No. 95–5235. JOHNSON *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 884;

No. 95–5427. MALLORY *v.* GILMORE ET AL., *ante*, p. 895;

No. 95–5496. JENKINS *v.* MAQUEEN ET AL., *ante*, p. 919;

No. 95–5537. BINNICK *v.* LANCASTER COUNTY PERSONNEL BOARD ET AL., *ante*, p. 920;

No. 95–5605. BRANNSON *v.* ELY, JUDGE, CIRCUIT COURT OF MISSOURI, JACKSON COUNTY, ET AL., *ante*, p. 933;

No. 95–5701. TSIMBIDAROS *v.* DEPARTMENT OF JUSTICE ET AL., *ante*, p. 922;

No. 95–5763. LAZO *v.* UNITED STATES, *ante*, p. 923;

No. 95–5780. MCADAMS *v.* OHIO, *ante*, p. 948;

No. 95–5804. FELDER *v.* MONTAGUE, CLERK, UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, *ante*, p. 965;

No. 95–5851. YURTIS *v.* PHIPPS, *ante*, p. 965;

No. 95–5889. BALLARD *v.* HOLLAND, WARDEN, *ante*, p. 966;

No. 95–5897. PENRY *v.* TEXAS, *ante*, p. 977;

No. 95–5934. KELLEY *v.* MARYLAND ET AL., *ante*, p. 977;

No. 95–5945. JENKINS *v.* KANSAS ET AL., *ante*, p. 977;

No. 95–5974. VINCENT *v.* C & P TELEPHONE CO. ET AL., *ante*, p. 978;

No. 95–5986. REEMSNYDER *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ET AL., *ante*, p. 967;

No. 95–6014. JENKINS *v.* BURTZLOFF ET AL., *ante*, p. 979;

No. 95–6032. GUPMAN ET UX. *v.* AGRIBANK, FCB, ET AL., *ante*, p. 979;

No. 95–6037. SHAFER *v.* CITY AND COUNTY OF DENVER, *ante*, p. 979;

No. 95–6048. IN RE LAND, *ante*, p. 929;

No. 95–6079. IN RE SMITH, *ante*, p. 973;

No. 95–6114. RICHARDS *v.* WOODS, DIRECTOR OF CLASSIFICATION, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 968;

No. 95–6159. SPEARMAN *v.* MORALES, ATTORNEY GENERAL OF TEXAS, ET AL., *ante*, p. 995;

No. 95–6213. CROSS *v.* UNITED STATES, *ante*, p. 955; and

No. 95–6392. IN RE CAMYN, *ante*, p. 963. Petitions for rehearing denied.

No. 94–8024. YOUNG *v.* SHILAOS ET AL., 514 U. S. 1053. Motion for leave to file petition for rehearing denied.

JANUARY 9, 1996

Miscellaneous Order

No. 94–1664. KOON *v.* UNITED STATES; and

No. 94–8842. POWELL *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, 515 U. S. 1190.] These cases are set for oral argument at 1 p.m. on Tuesday, February 20, 1996.

JANUARY 12, 1996

Certiorari Granted

No. 95–173. DEGEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 23, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 22, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 47 F. 3d 1511.

No. 95–345. UNITED STATES *v.* URSERY. C. A. 6th Cir.; and

No. 95–346. UNITED STATES *v.* $405,089.23 IN UNITED STATES CURRENCY ET AL. C. A. 9th Cir. Motions of respondents Guy Jerome Ursery and Charles Wesley Arlt, Sr., for leave to proceed *in forma pauperis* granted. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, February 23, 1996. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 22, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: No. 95–345, 59 F. 3d 568; No. 95–346, 33 F. 3d 1210 and 56 F. 3d 41.

JANUARY 16, 1996

Miscellaneous Orders

No. 95–799. IN RE RATCLIFF; and

No. 95–6655. IN RE PHILLIPS. Petitions for writs of mandamus denied.

Certiorari Denied

No. 94–1527. BARR LABORATORIES, INC. *v.* BURROUGHS WELLCOME CO.; and

No. 94–1531. NOVOPHARM, INC., ET AL. *v.* BURROUGHS WELLCOME CO. C. A. Fed. Cir. Certiorari denied. Reported below: 40 F. 3d 1223.

No. 95–358. RICE ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 51 F. 3d 194.

No. 95–398. BOUDREAU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 81.

No. 95–465. LAGUNA GATUNA, INC. *v.* BROWNER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 58 F. 3d 564.

No. 95–511. WILLIAMS *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 55 F. 3d 917.

No. 95–535. TORCASIO *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1340.

No. 95–565. RESTLAND FUNERAL HOME, INC., ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 51 F. 3d 56.

No. 95–572. LUFT ET UX. *v.* FARMERS HOME ADMINISTRATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 342.

No. 95–579. PERLMUTTER, INDIVIDUALLY AND AS GENERAL ADMINISTRATRIX AND ADMINISTRATRIX AD PROSEQUENDUM OF THE ESTATE OF PERLMUTTER *v.* COOPER ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–584. ELAGAMY *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 465.

No. 95–588. REDLAND SOCCER CLUB, INC., ET AL. *v.* DEPARTMENT OF THE ARMY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 55 F. 3d 827.

No. 95–600. TINGLEY ET AL. *v.* WILLIAMS COUNTY DEPARTMENT OF HUMAN SERVICES. Ct. App. Ohio, Williams County.

Certiorari denied. Reported below: 100 Ohio App. 3d 385, 654 N. E. 2d 148.

No. 95–607. PURMORT ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 1009.

No. 95–609. HOPKINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 53 F. 3d 533.

No. 95–620. ACTION FOR CHILDREN'S TELEVISION ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 59 F. 3d 1249.

No. 95–695. RIGGIN ET AL. *v.* OFFICE OF SENATE FAIR EMPLOYMENT PRACTICES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 61 F. 3d 1563.

No. 95–709. FORD MOTOR CO. ET AL. *v.* TEBBETTS, ADMINISTRATRIX OF THE ESTATE OF TEBBETTS. Sup. Ct. N. H. Certiorari denied. Reported below: 140 N. H. 203, 665 A. 2d 345.

No. 95–716. FERNANDEZ, EXECUTRIX OF THE ESTATE OF POSTON, ET AL. *v.* EMERSON, TRUSTEE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 170.

No. 95–720. INTERNATIONAL ASSOCIATION OF ENTREPRENEURS OF AMERICA BENEFIT TRUST *v.* ANGOFF, DIRECTOR, MISSOURI DEPARTMENT OF INSURANCE. C. A. 8th Cir. Certiorari denied. Reported below: 58 F. 3d 1266.

No. 95–724. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 102, ET AL. *v.* COUNTY OF SAN DIEGO. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 1346.

No. 95–725. ALFA-LAVAL FOOD & DAIRY CO. ET AL. *v.* BRITZ, INC., ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 34 Cal. App. 4th 1085, 40 Cal. Rptr. 2d 700.

No. 95–733. STEWART *v.* CITY OF LAKE CHARLES, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 321.

No. 95–734. DONALDSON CO., INC. *v.* NELSON INDUSTRIES, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 62 F. 3d 1433.

No. 95–738. DEPARTMENT OF THE TREASURY, OFFICE OF THRIFT SUPERVISION *v.* RAPAPORT. C. A. D. C. Cir. Certiorari denied. Reported below: 59 F. 3d 212.

No. 95–742. FLEMING, PERSONAL REPRESENTATIVE OF THE ESTATE OF HOSKINSON, ET AL. *v.* CALIFORNIA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 34 Cal. App. 4th 1378, 41 Cal. Rptr. 2d 63.

No. 95–749. KILCREASE *v.* GENERAL MOTORS CORP. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 323.

No. 95–750. GUILLEN-GARCIA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 7th Cir. Certiorari denied. Reported below: 60 F. 3d 340.

No. 95–751. MARITRANS OPERATING PARTNERS, L. P., ET AL. *v.* M/V BALSA 37 ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 150.

No. 95–752. COMMON COUNCIL OF CHARLESTON, WEST VIRGINIA *v.* BERKLEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 63 F. 3d 295.

No. 95–755. IN RE BREEDLOVE. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1065.

No. 95–758. MORETTI *v.* CITIBANK, N. A., BRANCH NO. 11, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 66 F. 3d 309.

No. 95–760. ROMERO ET UX., INDIVIDUALLY, AND ROMERO, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ROMERO, DECEASED *v.* BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 60 F. 3d 702.

No. 95–761. ALABAMA *v.* COCHRAN. C. A. 11th Cir. Certiorari denied. Reported below: 43 F. 3d 1404 and 61 F. 3d 20.

No. 95–763. CONSOLIDATED RAIL CORPORATION *v.* VANCE. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 222, 652 N. E. 2d 776.

No. 95–765. SANCHEZ, A MINOR, BY AND THROUGH HER NEXT FRIEND, PARENT, AND GUARDIAN, DEFERDINANDO, ET AL. *v.*

SCHOOL DISTRICT 9–R. Ct. App. Colo. Certiorari denied. Reported below: 902 P. 2d 450.

No. 95–766. NELSON, GOVERNOR OF NEBRASKA, ET AL. *v.* ORR ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 60 F. 3d 497.

No. 95–769. ALLEN *v.* ALLEN ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 441 Pa. Super. 663, 657 A. 2d 45.

No. 95–772. OUTDOOR COMMUNICATIONS, INC. *v.* CITY OF MURFREESBORO. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 171.

No. 95–776. CISNEROS *v.* U. D. REGISTRY, INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 34 Cal. App. 4th 107, 40 Cal. Rptr. 2d 228.

No. 95–777. SAENZ *v.* ARRELLANO GONZALEZ. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 322.

No. 95–780. SINGH *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 213 App. Div. 2d 568, 623 N. Y. S. 2d 919.

No. 95–785. BARITSKY *v.* (BARITSKY) SIEGLER. Ct. App. Wis. Certiorari denied.

No. 95–792. TRISTANI ET AL. *v.* LORENZO ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–814. ATTEBERRY ET AL. *v.* MAUMELLE CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 60 F. 3d 415.

No. 95–826. JENKINS *v.* NEW MEXICO SECURITIES DIVISION. Ct. App. N. M. Certiorari denied.

No. 95–828. MACDRAW, INC. *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 71 F. 3d 404.

No. 95–839. LINDSAY ET AL. *v.* BENEFICIAL REINSURANCE CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 942.

No. 95–861. TONQUIN FISHERIES, INC., OWNER OF THE F/V TONQUIN *v.* WARD, MOTHER OF TOUSIGNANT, CAPTAIN OF THE

ABOVE-NAMED VESSEL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 176.

No. 95–864. MARESCA *v.* COMMISSIONER OF PATENTS AND TRADEMARKS. C. A. Fed. Cir. Certiorari denied. Reported below: 56 F. 3d 80.

No. 95–866. GOSBEE *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR MIDWEST FEDERAL SAVINGS BANK OF MINOT. Sup. Ct. N. D. Certiorari denied. Reported below: 536 N. W. 2d 698.

No. 95–877. YOONESSI *v.* STATE UNIVERSITY OF NEW YORK (BUFFALO) ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 56 F. 3d 10.

No. 95–881. HENRY *v.* MONTANA ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 271 Mont. 491, 898 P. 2d 1195.

No. 95–884. MOCCO *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 141 N. J. 142, 661 A. 2d 251.

No. 95–894. FITZGERALD *v.* BAYHAM ET AL. Ct. App. Ariz. Certiorari denied.

No. 95–899. BONNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 640.

No. 95–903. PHELPS *v.* WINCHESTER MEDICAL CENTER, INC. Cir. Ct. Warren County, Va. Certiorari denied.

No. 95–904. PABON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 404.

No. 95–905. MARTINEZ *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 327.

No. 95–906. SUTTON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 355.

No. 95–907. MCNAUGHTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 62 F. 3d 544.

No. 95–911. CHUDSON *v.* ENVIRONMENTAL PROTECTION AGENCY. C. A. Fed. Cir. Certiorari denied. Reported below: 61 F. 3d 919.

No. 95–913. SOLEM *v.* COURTER, VIRGINIA COMMISSIONER OF AGRICULTURE AND CONSUMER SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 659.

No. 95–916. ROBINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 914.

No. 95–922. PHILLIPS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 346.

No. 95–940. ALLENDER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 62 F. 3d 909.

No. 95–950. GORWELL *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 339 Md. 203, 661 A. 2d 718.

No. 95–952. MYERS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 95–954. MOORE *v.* CAMPBELL ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 904 S. W. 2d 378.

No. 95–5830. CUETO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1245.

No. 95–6049. KROUT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 643.

No. 95–6087. OGROD *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 441 Pa. Super. 670, 657 A. 2d 52.

No. 95–6117. CARR *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 655 So. 2d 824.

No. 95–6288. FLORES-PERAZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 164.

No. 95–6289. FARES ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 50 F. 3d 6.

No. 95–6299. FECHTER ET VIR *v.* SHIROKY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 175.

No. 95–6313. CADOTTE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 57 F. 3d 661.

No. 95–6353. BIVINS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 642 N. E. 2d 928.

No. 95–6361. AGUIRRE-CERDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 176.

No. 95–6367. CAIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 10 Cal. 4th 1, 892 P. 2d 1224.

No. 95–6377. ALBA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 905 S. W. 2d 581.

No. 95–6381. FULLER *v.* WOOTEN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 66 F. 3d 338.

No. 95–6391. POWERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 1460.

No. 95–6398. SPIVEY *v.* THOMAS, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 95–6424. BRYANT-BEY *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied.

No. 95–6427. STRETCHER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 400.

No. 95–6446. DIXON *v.* OHIO. Ct. App. Ohio, Lucas County. Certiorari denied. Reported below: 101 Ohio App. 3d 552, 656 N. E. 2d 1.

No. 95–6640. SCOTT *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 891 P. 2d 1283.

No. 95–6654. MILLER *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 469.

No. 95–6656. KIGHT *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 50 F. 3d 1539.

No. 95–6657. JOHNSON *v.* UTAH. Dist. Ct. Utah, Kane County. Certiorari denied.

No. 95–6669. GRANBERRY *v.* HEISNER ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–6670. FICA *v.* BUTTERWORTH, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–6688. DICKERSON *v.* UNITED PARCEL SERVICE. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 894.

No. 95–6699. BUHRMASTER *v.* OVERNITE TRANSPORTATION CO. C. A. 6th Cir. Certiorari denied. Reported below: 61 F. 3d 461.

No. 95–6701. MCINTYRE *v.* HATCHER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1424.

No. 95–6702. VALLES *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 321.

No. 95–6703. TALLEY *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 659.

No. 95–6704. CAREY *v.* ST. THERESA SCHOOL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 905.

No. 95–6705. BEDSON *v.* CLEGG, DEPUTY SHERIFF, PASCO COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 181.

No. 95–6709. COTHAM *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 662.

No. 95–6720. STOKLEY *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 182 Ariz. 505, 898 P. 2d 454.

No. 95–6726. LIPSCOMB *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 214 App. Div. 2d 970, 626 N. Y. S. 2d 919.

No. 95–6741. STOKES *v.* WOOD, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 95–6742. PHILLIPS *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 312.

No. 95–6747. COLE *v.* CITY OF MILWAUKEE, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 67 F. 3d 301.

No. 95–6748. VEGA *v.* WILLIAMS ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 659 So. 2d 277.

No. 95–6755. SINGH *v.* REEVES, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 95–6756. VAN BELLE ET UX. *v.* ATLANTIC EQUIPMENT ENGINEERS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 819.

No. 95–6758. MCCLAIN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 95–6760. HILL *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 433, 653 N. E. 2d 271.

No. 95–6763. ALLY *v.* KOCH ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–6768. KHARRAT *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 833.

No. 95–6769. JACOBS *v.* WILKINSON, DIRECTOR, OHIO DEPARTMENT OF CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–6772. FINCH *v.* GOMEZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6773. SHIPP *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–6775. NELSON *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 95–6779. MCBRIDE *v.* SIKES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 95–6784. BUSBY *v.* HOLLYWOOD ARDMORE COOPERATIVE, INC. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 666.

No. 95–6785. DAUGHTRY *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 340 N. C. 488, 459 S. E. 2d 747.

No. 95–6787. TUCKER *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 319 S. C. 425, 462 S. E. 2d 263.

No. 95–6788. WILSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 95–6791. HALL *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL. Sup. Ct. Mo. Certiorari denied.

No. 95–6803. BOUT *v.* ABRAMAJTYS. C. A. 6th Cir. Certiorari denied.

No. 95–6810. FERGUSON *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 95–6815. TOWNSEND *v.* PURKETT, SUPERINTENDENT, FARMINGTON CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 67 F. 3d 303.

No. 95–6820. HOLMAN *v.* UDALL, ATTORNEY GENERAL OF NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 65 F. 3d 178.

No. 95–6829. ADDERLY *v.* WHITAKER. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1247.

No. 95–6846. EVERETT *v.* ROBERTS, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1281.

No. 95–6860. NEILL *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 896 P. 2d 537.

No. 95–6866. JENKINS *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 870 S. W. 2d 626.

No. 95–6896. RAITPORT *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 66 F. 3d 344.

No. 95–6901. LAU *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 54 F. 3d 785.

No. 95–6902. AMERSON *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 59 F. 3d 92.

No. 95–6907. ELIAS *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 910.

No. 95–6910. HARRELSON *v.* TRIPPETT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 67 F. 3d 299.

No. 95–6911. HENLEY *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 58 F. 3d 210.

No. 95–6923. COOK *v.* WHITE. C. A. 4th Cir. Certiorari denied.

No. 95–6927. ROWSER *v.* WAYNE CAR RELEASING SERVICES, INC. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 95–6937. GARDNER *v.* METROPOLITAN GOVERNMENT DEPARTMENT OF CODES ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–6961. RIVERA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 327.

No. 95–6963. CLENCY *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 60 F. 3d 751.

No. 95–6974. LEWIS *v.* RUNYON, POSTMASTER GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 175.

No. 95–6975. NEFSTAD *v.* BALDWIN, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 335.

No. 95–6987. MERLOS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 65 F. 3d 962.

No. 95–6998. MOORE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 54 F. 3d 92.

No. 95–7005. NIETO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 60 F. 3d 1464.

No. 95–7011. GEORGOPAPADAKOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 75.

No. 95–7013. GILLARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 472.

No. 95–7016. DEAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 1479.

No. 95–7019. MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 336.

No. 95–7021. MONTGOMERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 341.

No. 95–7026. CUEVAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1257.

No. 95–7030. HERNANDEZ *v.* UNITED STATES; and
No. 95–7051. PEREZ-GARCIA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 F. 3d 1468.

No. 95–7036. BARTLETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 F. 3d 167.

No. 95–7038. BUSH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 70 F. 3d 557.

No. 95–7039. BARTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1247.

No. 95–7040. BAYRON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 67 F. 3d 292.

No. 95–7049. SHERLIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 67 F. 3d 1208.

No. 95–7052. MOORE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1258.

No. 95–7056. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 65 F. 3d 169.

No. 95–7058. LAMBROS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 65 F. 3d 698.

No. 95–7062. SAPP ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 53 F. 3d 1100.

No. 95–7067. SEARCY *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 651 N. E. 2d 355.

No. 95–7086. HARRIS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 653 So. 2d 402.

No. 95–7090. HEATER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 63 F. 3d 311.

No. 95–7091. DANGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 68 F. 3d 485.

No. 95–7092. HOOKS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 65 F. 3d 850.

No. 95–7093. HICKMAN *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–7095. BECKWITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 313.

No. 95–7099. SANCHEZ-COBARRUVIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 781.

No. 95–7104. CURTIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 F. 3d 294.

No. 95–7106. LANGLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 62 F. 3d 602.

No. 95–7108. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 825.

No. 95–7112. HOOKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 466.

No. 95–7113. FORD *v.* HOKE, SUPERINTENDENT, EASTERN CORRECTIONAL FACILITY, NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 95–7126. SUPPLEE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 F. 3d 458.

No. 95–7127. WILLIAMS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 95–7129. SULLIVAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 323.

No. 95–7130. CRANER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 F. 3d 315.

No. 95–7133. GRISHAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1074.

No. 95–7135. DENIS-LAMARCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 64 F. 3d 597.

No. 95–7138. ROGERS *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 38 Conn. App. 777, 664 A. 2d 291.

No. 95–7141. AUSTIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 66 F. 3d 1115.

No. 95–581. SEATTLE LAKE SHORE & EASTERN RAILROAD, INC. *v.* INTERSTATE COMMERCE COMMISSION ET AL. C. A. D. C. Cir. Motion of petitioner to strike brief in opposition of City of Seattle et al. denied. Certiorari denied. Reported below: 55 F. 3d 684.

No. 95–595. HILLER SYSTEMS, INC., ET AL. *v.* SERVIS, ADMINISTRATRIX OF THE ESTATE OF HUMPHREY, ET AL. C. A. 4th Cir. Motion of Michael G. Miller and Sadie R. Richardson for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 54 F. 3d 203.

No. 95–601. LOWSLEY-WILLIAMS & COS. ET AL. *v.* RAYTHEON CO. Ct. App. Cal., 1st App. Dist. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 95–768. CLARK ET AL. *v.* BRIEN, REPRESENTATIVE OF UNDERWRITERS AT LLOYD'S LONDON. C. A. 10th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 59 F. 3d 1082.

No. 95–743. PALERMO ET AL. *v.* WOODS. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 60 F. 3d 1161.

No. 95–757. HARRIS *v.* AT&T COMMUNICATIONS, INC., FKA AT&T INFORMATION SYSTEMS. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 66 F. 3d 322.

No. 95–767. CALIFORNIA PUBLIC UTILITIES COMMISSION ET AL. *v.* BRAS, INDIVIDUALLY AND DBA J. JACK BRAS & ASSOCIATES. C. A. 9th Cir. Motion of AT&T et al. for leave to file a

brief as *amici curiae* granted. Certiorari denied. Reported below: 59 F. 3d 869.

Rehearing Denied

No. D–1590. IN RE DISBARMENT OF SMITH, *ante*, p. 984;

No. 94–8845. TABAS *v.* UNITED STATES, *ante*, p. 973;

No. 94–9617. HANSEN *v.* MISSISSIPPI, *ante*, p. 986;

No. 95–265. CLEVELAND INDUSTRIAL SQUARE, INC. *v.* WHITE, MAYOR OF CLEVELAND, ET AL., *ante*, p. 986;

No. 95–582. MUSTIN *v.* WITHROW, WARDEN, *ante*, p. 1011;

No. 95–610. ROUSSIN *v.* MISSOURI, *ante*, p. 990;

No. 95–5649. SIAO-PAO *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY, *ante*, p. 992;

No. 95–5681. SCARBROUGH *v.* CITY OF PRICHARD, ALABAMA, ET AL., *ante*, p. 946;

No. 95–5782. MCCULLAR *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 948;

No. 95–5783. JENKINS *v.* JENKINS, *ante*, p. 948;

No. 95–5943. MCNAMARA *v.* COCHRAN ET AL., *ante*, p. 977;

No. 95–5991. WILSON *v.* DOUGHERTY COUNTY, GEORGIA, ET AL., *ante*, p. 978;

No. 95–5993. WEST *v.* HANRAHAN, *ante*, p. 978;

No. 95–6012. MOODY *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 978;

No. 95–6140. MUTCH *v.* JARRATT ET AL., *ante*, p. 994;

No. 95–6145. MARTIN *v.* WASHINGTON, *ante*, p. 994;

No. 95–6146. JACKSON *v.* SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION, *ante*, p. 994;

No. 95–6154. SANDERS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, *ante*, p. 994;

No. 95–6171. BRINKLEY *v.* SKJONSBERG ET AL., *ante*, p. 995;

No. 95–6201. JENKINS *v.* SCOTT ET AL., *ante*, p. 996;

No. 95–6208. LISTERMAN *v.* GTE CALIFORNIA INC. ET AL., *ante*, p. 996;

No. 95–6327. CSORBA *v.* VARO, INC., *ante*, p. 1013;

No. 95–6352. JENKINS *v.* MCKUNE, WARDEN, *ante*, p. 1030;

No. 95–6356. STEELE *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY, ET AL., *ante*, p. 997;

No. 95–6368. TURNER *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 997;

No. 95–6421. SALEEM *v.* UNITED STATES, *ante*, p. 980; and

No. 95–6521. IN RE JANEK, *ante*, p. 1008. Petitions for rehearing denied.

No. 95–5450. LUCKETT *v.* RENT-A-CENTER, INC., ET AL., *ante*, p. 965. Motion for leave to file petition for rehearing denied.

JANUARY 18, 1996

Dismissal Under Rule 46

No. 95–5434. CROSSEN ET UX. *v.* UNITED STATES ET AL. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 46.

JANUARY 19, 1996

Certiorari Granted

No. 95–27. MERRILL ET AL. *v.* BARBOUR. C. A. D. C. Cir. Certiorari granted limited to Question 2 presented by the petition. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 1, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 29, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 48 F. 3d 1270.

No. 95–668. AUCIELLO IRON WORKS, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 1st Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 1, 1996. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 29, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 60 F. 3d 24.

No. 95–719. GASPERINI *v.* CENTER FOR HUMANITIES, INC. C. A. 2d Cir. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 1, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 29, 1996. A reply brief, if any, is to

be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 66 F. 3d 427.

No. 95–754. MEDTRONIC, INC. *v.* LOHR ET VIR; and

No. 95–886. LOHR ET VIR *v.* MEDTRONIC, INC. C. A. 11th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Briefs of petitioners are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 1, 1996. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 29, 1996. Reply briefs, if any, are to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 56 F. 3d 1335.

No. 95–809. LOCKHEED CORP. ET AL. *v.* SPINK. C. A. 9th Cir. Motions of Equal Employment Advisory Council, ERISA Industry Committee et al., and Chamber of Commerce of the United States of America for leave to file briefs as *amici curiae* granted. Certiorari granted. Brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 1, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 29, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 60 F. 3d 616.

No. 95–860. SMILEY *v.* CITIBANK (SOUTH DAKOTA), N. A. Sup. Ct. Cal. Certiorari granted. Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 1, 1996. Brief of respondent is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 29, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 11 Cal. 4th 138, 900 P. 2d 690.

No. 95–865. UNITED STATES *v.* WINSTAR CORP. ET AL. C. A. Fed. Cir. Certiorari granted. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 1, 1996. Briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 29, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 64 F. 3d 1531.

No. 95–6465. LEWIS *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "Whether a defendant who would otherwise have a constitutional right to a jury trial may be denied that right because the presiding judge has made a pretrial commitment that the aggregate sentence imposed will not exceed six months?" Brief of petitioner is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 1, 1996. Brief of the Solicitor General is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, March 29, 1996. A reply brief, if any, is to be filed pursuant to this Court's Rule 25.3. Rule 29.2 does not apply. Reported below: 65 F. 3d 252.

Certiorari Denied

No. 95–6856 (A–580). FLAMER *v.* DELAWARE ET AL. C. A. 3d Cir. Application for stay of execution of sentence of death, presented to JUSTICE SOUTER, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 68 F. 3d 710 and 736.

No. 95–7098 (A–515). BAILEY *v.* SNYDER, WARDEN. C. A. 3d Cir. Application for stay of execution of sentence of death, presented to JUSTICE SOUTER, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 68 F. 3d 736.

JANUARY 22, 1996

Certiorari Granted—Vacated and Remanded

No. 95–339. KOREAN AIR LINES CO., LTD. *v.* HOLLIE, PERSONAL REPRESENTATIVE OF AND ADMINISTRATRIX OF THE ESTATE OF SWIFT, DECEASED. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Zicherman* v. *Korean Air Lines Co.*, *ante*, p. 217. Reported below: 60 F. 3d 90.

Miscellaneous Orders. (See also No. 95–6710, *ante*, p. 297.)

No. A–534. DEMAREY *v.* UNITED STATES. Application for release pending appeal, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. D–1596. IN RE DISBARMENT OF GREENBERG. Disbarment entered. [For earlier order herein, see *ante*, p. 940.]

No. D–1597. IN RE DISBARMENT OF WOLLMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 940.]

No. D–1598. IN RE DISBARMENT OF SIGNORE. Disbarment entered. [For earlier order herein, see *ante*, p. 940.]

No. D–1599. IN RE DISBARMENT OF WEISGERBER. Disbarment entered. [For earlier order herein, see *ante*, p. 940.]

No. D–1600. IN RE DISBARMENT OF INGLIS. Disbarment entered. [For earlier order herein, see *ante*, p. 941.]

No. D–1601. IN RE DISBARMENT OF BUSTAMANTE. Disbarment entered. [For earlier order herein, see *ante*, p. 941.]

No. D–1602. IN RE DISBARMENT OF BRYANT. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–1603. IN RE DISBARMENT OF SHAPIRO. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–1604. IN RE DISBARMENT OF CARSON. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–1605. IN RE DISBARMENT OF EDELL. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–1606. IN RE DISBARMENT OF SMITH. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–1609. IN RE DISBARMENT OF HENDRICKS. Disbarment entered. [For earlier order herein, see *ante*, p. 962.]

No. D–1610. IN RE DISBARMENT OF PHILLIPS. Disbarment entered. [For earlier order herein, see *ante*, p. 962.]

No. D–1612. IN RE DISBARMENT OF SUDDARD. Disbarment entered. [For earlier order herein, see *ante*, p. 985.]

No. D–1615. IN RE DISBARMENT OF REGGIE. Disbarment entered. [For earlier order herein, see *ante*, p. 985.]

No. D–1617. IN RE DISBARMENT OF SAVOY. Disbarment entered. [For earlier order herein, see *ante*, p. 985.]

No. D–1618. IN RE DISBARMENT OF POWELL. Disbarment entered. [For earlier order herein, see *ante*, p. 985.]

No. D–1619. IN RE DISBARMENT OF JASINSKI. Disbarment entered. [For earlier order herein, see *ante*, p. 986.]

No. D–1632. IN RE DISBARMENT OF MURACA. Frank John Muraca, of Dunmore, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1633. IN RE DISBARMENT OF CONNICK. Harry A. Connick, of Novato, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1634. IN RE DISBARMENT OF WELLS. Edward G. Wells, of Palatine, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1635. IN RE DISBARMENT OF MCGLORY. Dennis Crawford McGlory, of Crystal Lake, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1636. IN RE DISBARMENT OF TINSLEY. Lindell T. Tinsley, of Washington, D. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1637. IN RE DISBARMENT OF NOXON. Stevan Noxon, of Fresno, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring

him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–38. GOWIN *v.* DADE COUNTY AUTO TAG OFFICE, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES. Motion to direct the Clerk to file petition for writ of certiorari that does not comply with the Rules of this Court denied.

No. M–39. ROBINSON *v.* ARIZONA. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 106, Orig. ILLINOIS *v.* KENTUCKY. Motion of the Special Master for compensation and reimbursement of expenses granted, and the Special Master is awarded a total of $4,988 for the period December 13, 1994, through December 22, 1995, to be paid equally by the parties. [For earlier decision herein, see, *e. g.*, 513 U. S. 177.]

No. 95–124. DENVER AREA EDUCATIONAL TELECOMMUNICATIONS CONSORTIUM, INC., ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 95–227. ALLIANCE FOR COMMUNITY MEDIA ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 973.] Motion of petitioners for divided argument denied.

No. 95–129. EXXON CO., U. S. A., ET AL. *v.* SOFEC, INC., ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 983.] Motion of Maritime Law Association of the United States for leave to file a brief as *amicus curiae* granted.

No. 95–157. UNITED STATES *v.* ARMSTRONG ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 942.] Motion of respondent Robert Rozelle for divided argument denied.

No. 95–266. JAFFEE, SPECIAL ADMINISTRATOR FOR ALLEN, DECEASED *v.* REDMOND ET AL. C. A. 7th Cir. [Certiorari granted, *ante*, p. 930.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–340. UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 751 *v.* BROWN GROUP, INC., DBA BROWN SHOE CO. C. A. 8th Cir. [Certiorari granted, *ante*, p. 930.] Motion of the Solici-

tor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–354. O'CONNOR *v.* CONSOLIDATED COIN CATERERS CORP. C. A. 4th Cir. [Certiorari granted, *ante*, p. 973.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–7076 (A–516). IN RE WAPNICK. Application for stay, addressed to JUSTICE BREYER and referred to the Court, denied. Petition for writ of mandamus denied.

No. 95–6848. IN RE HACKETT. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 94–1537. RICHARDS, FKA MORGAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 37 F. 3d 587.

No. 94–1747. ROSSMAN *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 46 F. 3d 1144.

No. 94–1868. NORTH CAROLINA POWER *v.* NORTH CAROLINA UTILITIES COMMISSION. Sup. Ct. N. C. Certiorari denied. Reported below: 338 N. C. 412, 450 S. E. 2d 896.

No. 95–466. BENNETT ET AL. *v.* UNITED STATES;
No. 95–801. BARONA ET AL. *v.* UNITED STATES (two judgments); and
No. 95–6433. MCCARVER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: Nos. 95–466, 95–801 (first judgment), and 95–6433, 56 F. 3d 1087; No. 95–801 (second judgment), 59 F. 3d 176.

No. 95–534. LUNDMAN, TRUSTEE FOR THE NEXT OF KIN OF LUNDMAN, DECEASED *v.* FIRST CHURCH OF CHRIST, SCIENTIST, ET AL. Ct. App. Minn. Certiorari denied. Reported below: 530 N. W. 2d 807.

No. 95–622. GURDON ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF RIVERHEAD SAVINGS BANK, FSB, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 47 F. 3d 1157.

No. 95–641. THREE SISTERS SPORTSWEAR CO. ET AL. *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 55 F. 3d 684.

No. 95–642. FRIEND *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 50 F. 3d 548.

No. 95–673. WILSON, GOVERNOR OF CALIFORNIA, ET AL. *v.* VOTING RIGHTS COALITION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 1411.

No. 95–712. LASALLE BANK LAKE VIEW *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 60 F. 3d 1286.

No. 95–790. SOUTHMARK CORP. *v.* MARLEY. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 104.

No. 95–791. HESTER ET UX., INDIVIDUALLY, AND HESTER, AS EXECUTRIX OF THE ESTATE OF HESTER, DECEASED *v.* CSX TRANSPORTATION, INC. C. A. 5th Cir. Certiorari denied. Reported below: 61 F. 3d 382.

No. 95–798. WAITE, PERSONAL REPRESENTATIVE OF THE ESTATE OF WAITE, DECEASED *v.* CARPENTER ET AL. Ct. App. Neb. Certiorari denied. Reported below: 3 Neb. App. 879, 533 N. W. 2d 917.

No. 95–805. CHASE PACKAGING CORP. *v.* SUPER SACK MANUFACTURING CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 57 F. 3d 1054.

No. 95–810. SCOTT, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION *v.* SHERMAN. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 136.

No. 95–819. PAPA *v.* NASSAU COUNTY DEPARTMENT OF SOCIAL SERVICES. Ct. App. N. Y. Certiorari denied. Reported below: 86 N. Y. 2d 875, 658 N. E. 2d 1042.

No. 95–820. KNOLL ET AL. *v.* ELIZABETH BLACKWELL HEALTH CENTER FOR WOMEN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 170.

No. 95–822. COSSEY *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied.

No. 95–823. EMPLOYERS RESOURCE MANAGEMENT CO., INC., ET AL. *v.* SHANNON, COMMISSIONER, STATE CORPORATION COMMISSION OF VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 65 F. 3d 1126.

No. 95–825. GROGAN *v.* TAYLOR, DBA ROCKY MOUNTAIN PLATEAU. Sup. Ct. Colo. Certiorari denied. Reported below: 900 P. 2d 60.

No. 95–827. GROSS *v.* CHEVROLET COUNTRY, INC. Sup. Ct. Miss. Certiorari denied. Reported below: 655 So. 2d 873.

No. 95–844. M. BIANCHI OF CALIFORNIA *v.* PERRY, SECRETARY OF DEFENSE. C. A. Fed. Cir. Certiorari denied. Reported below: 61 F. 3d 920.

No. 95–850. EL-ATTAR *v.* MISSISSIPPI STATE UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 468.

No. 95–868. DARLAK *v.* COLUMBUS-AMERICA DISCOVERY GROUP, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 20.

No. 95–882. KELLY *v.* TREE FARM DEVELOPMENT CORP. ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 661 So. 2d 824.

No. 95–919. UNITED STATES EX REL. PAUL *v.* PARSONS, BRINKERHOFF, QUADE & DOUGLAS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 1282.

No. 95–971. CONNELL *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 42 M. J. 462.

No. 95–988. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 F. 3d 326.

No. 95–998. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 F. 3d 297.

No. 95–1014. KEOGH ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 312.

No. 95–5407. TIMBERLAKE *v.* LAMER, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 48 F. 3d 537.

No. 95–5815. BILLIOT *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 655 So. 2d 1.

No. 95–5972. SHUMWAY *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 76 Wash. App. 1046.

No. 95–6178. VINCENT *v.* RUNYON, POSTMASTER GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 52 F. 3d 1066.

No. 95–6436. MCMICHEN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 598, 458 S. E. 2d 833.

No. 95–6799. SIVAK *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 127 Idaho 387, 901 P. 2d 494.

No. 95–6801. DAILEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 659 So. 2d 246.

No. 95–6813. SLAPPY *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 66 F. 3d 317.

No. 95–6814. FRAZIER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 323, 652 N. E. 2d 1000.

No. 95–6826. LAFEVERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 897 P. 2d 292.

No. 95–6832. THOMAS *v.* TURNER. C. A. 10th Cir. Certiorari denied. Reported below: 54 F. 3d 788.

No. 95–6833. HAIGLER *v.* SOUTH CAROLINA. Ct. Common Pleas of Orangeburg County, S. C. Certiorari denied.

No. 95–6836. PARKER *v.* NORRIS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 64 F. 3d 1178.

No. 95–6838. WILSON *v.* RAYMOND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 65 F. 3d 167.

No. 95–6840. PRYOR *v.* CITY OF DESOTO, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 95–6864. FITZGERALD *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 658 So. 2d 565.

No. 95–6865. MEADOWS *v.* JACKSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 340.

No. 95–6875. HUDGINS *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 319 S. C. 233, 460 S. E. 2d 388.

No. 95–6878. ALLEN *v.* CITY OF MEMPHIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 170.

No. 95–6880. MANN *v.* SOUTH CAROLINA. Ct. Common Pleas of Greenville County, S. C. Certiorari denied.

No. 95–6881. JOHNSON *v.* TRENT, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 657.

No. 95–6884. ALEXANDER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 228 Ill. App. 3d 1098, 648 N. E. 2d 353.

No. 95–6885. ECHOLS *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 344.

No. 95–6886. MCMOORE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 214 App. Div. 2d 893, 626 N. Y. S. 2d 289.

No. 95–6900. BARNES *v.* AAA STANDARD SERVICE, INC. C. A. 6th Cir. Certiorari denied. Reported below: 56 F. 3d 64.

No. 95–6906. DUNLAP *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 308, 652 N. E. 2d 988.

No. 95–6928. CREMEANS *v.* CHAPLEAU, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 167.

No. 95–6931. MACK *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 502, 653 N. E. 2d 329.

No. 95–6932. BORCH *v.* HLUCHANIUK, ASSISTANT UNITED STATES ATTORNEY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 56 F. 3d 60.

No. 95–6955. FINNEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 660 So. 2d 674.

No. 95–6964. BARWICK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 660 So. 2d 685.

No. 95–6973. BERRY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 72 Ohio St. 3d 354, 650 N. E. 2d 433.

No. 95–6979. ROSELIN *v.* BOARD OF PATENT APPEALS AND INTERFERENCES. C. A. Fed. Cir. Certiorari denied. Reported below: 57 F. 3d 1085.

No. 95–7000. ROYAL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 250 Va. 110, 458 S. E. 2d 575.

No. 95–7057. KIRK *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 72 Ohio St. 3d 564, 651 N. E. 2d 981.

No. 95–7063. ANTONELLI *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 95–7073. PADGETT *v.* O'SULLIVAN, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 65 F. 3d 72.

No. 95–7111. BOWEN *v.* STATE FARM FIRE & CASUALTY CO. C. A. 4th Cir. Certiorari denied. Reported below: 61 F. 3d 899.

No. 95–7150. RICH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 58 F. 3d 637.

No. 95–7152. BLUM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 65 F. 3d 1436.

No. 95–7154. BAKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 F. 3d 1478.

No. 95–7158. SLOAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 65 F. 3d 861.

No. 95–7159. CHRONISTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 66 F. 3d 339.

No. 95–7160. COMBS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 341.

No. 95–7164. PERDOMO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 66 F. 3d 317.

No. 95–7165. PLATA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1078.

No. 95–7166. PARKS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 860.

No. 95–7167. VILLALBA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 1281.

No. 95–7175. CHILDRESS ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 58 F. 3d 693.

No. 95–7181. MARIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 399.

No. 95–7185. KNOWLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 551.

No. 95–7189. KINNEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 F. 3d 458.

No. 95–7191. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 62 F. 3d 1073.

No. 95–7199. GREEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 65 F. 3d 546.

No. 95–7200. FULTZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 835.

No. 95–7201. GESSA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 493.

No. 95–7202. FAIR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 833.

No. 95–7205. GORBY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 F. 3d 475.

No. 95–7212. RAMON DIEGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 67 F. 3d 314.

No. 95–7213. ESCOBEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 470.

No. 95–7214. DOUGLAS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 70 F. 3d 638.

No. 95–7218. KNIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 58 F. 3d 393.

No. 95–7220. MCLELLAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 60 F. 3d 729.

No. 95–7224. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 327.

No. 95–7226. WOLVERTON *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 193 Wis. 2d 234, 533 N. W. 2d 167.

No. 95–355. MCKOWN ET AL. *v.* LUNDMAN, TRUSTEE FOR THE NEXT OF KIN OF LUNDMAN, DECEASED. Ct. App. Minn. Motion of Archdiocese of St. Paul and Minneapolis et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 530 N. W. 2d 807.

No. 95–664. COUNTY OF CONTRA COSTA *v.* VISNESS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 57 F. 3d 775.

Rehearing Denied

No. 95–353. MITCHELSON *v.* UNITED STATES, *ante*, p. 1008;

No. 95–538. DOLENZ *v.* NATIONWIDE INDEMNITY INSURANCE CO., *ante*, p. 1010;

No. 95–555. JACKSON *v.* OFFICE OF DISCIPLINARY COUNSEL, *ante*, p. 1010;

No. 95–5806. HOMO ET AL. *v.* CITY OF HENNIKER, NEW HAMPSHIRE, *ante*, p. 949;

No. 95–5808. MOSAVI *v.* UNITED STATES, *ante*, p. 924;

No. 95–6018. PUTMAN *v.* THOMAS, WARDEN, *ante*, p. 1012;

No. 95–6077. RODRIGUEZ *v.* FLORIDA, *ante*, p. 993;

No. 95–6167. MARTINEZ *v.* ROTH ET AL., *ante*, p. 1012;

No. 95–6229. CAVIN *v.* SOUTH CAROLINA, *ante*, p. 1012;

No. 95–6396. PEGANOFF *v.* PENNSYLVANIA, *ante*, p. 998;

No. 95–6439. POWELL *v.* UNITED STATES, *ante*, p. 999; and

No. 95–6628. OGUGUO *v.* UNITED STATES, *ante*, p. 1016. Petitions for rehearing denied.

No. 95–6008. ISAACS *v.* THOMAS, WARDEN, *ante*, p. 1002. Petition for rehearing denied. JUSTICE THOMAS took no part in the consideration or decision of this petition.

JANUARY 23, 1996

Certiorari Denied

No. 95–7453 (A–587). TOWNES *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 68 F. 3d 840.

No. 95–7512 (A–598). TOWNES *v.* VIRGINIA. Sup. Ct. Va. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied. JUSTICE STEVENS and JUSTICE GINSBURG would grant the application for stay of execution.

No. 95–7573 (A–611). TOWNES *v.* ANGELONE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. Certiorari denied.

JANUARY 25, 1996

Miscellaneous Order

No. A–616. ANDERSON, WARDEN *v.* BUELL. Application to vacate the stay of execution of sentence of death entered by the United States Court of Appeals for the Sixth Circuit, presented to JUSTICE STEVENS, and by him referred to the Court, denied.

JUSTICE SCALIA, with whom THE CHIEF JUSTICE, JUSTICE KENNEDY, and JUSTICE THOMAS join, dissenting.

I respectfully dissent from the Court's refusal to vacate the stay entered by the Court of Appeals for the Sixth Circuit.

On July 17, 1982, respondent abducted an 11-year-old girl while she was collecting aluminum cans in a ballpark across the street from her home. The Ohio Supreme Court's opinion affirming respondent's conviction and death sentence describes what authorities found six days later:

> "[The victim] had been viciously sexually assaulted by the thrusting of a rigid object against the inlet of her vagina and then strangled to death. Her feet were bound with a large

piece of plastic and tape." *State* v. *Buell*, 22 Ohio St. 3d 124, 125, 489 N. E. 2d 795, 798 (1986).

We denied certiorari. 479 U. S. 871 (1986). Respondent commenced proceedings for postconviction relief in state court, and denial of this relief was made final by the Ohio Supreme Court in 1992. 62 Ohio St. 3d 1508, 583 N. E. 2d 1320, rehearing denied, 63 Ohio St. 3d 1418, 586 N. E. 2d 126.

More than six months later and just five days prior to his then-scheduled execution date, respondent filed a petition for a writ of habeas corpus in the United States District Court. Two days thereafter, on September 18, 1992, Judge Paul R. Matia "*reluctantly*" granted a stay even though he noted that "[c]ounsel for [respondent had] deliberately waited until literally hours before the execution to begin their federal court procedures." *Buell* v. *Tate*, No. 1:92CV1918 (ND Ohio, Sept. 18, 1992), p. 3.

Judge Matia subsequently granted respondent's motion to dismiss his federal habeas petition without prejudice so that respondent could bring a claim of ineffective assistance of counsel to the Ohio appellate courts. Denial of that claim was affirmed by the Ohio Supreme Court on November 17, 1993, 67 Ohio St. 3d 1500, 622 N. E. 2d 649, and this Court again denied review, 511 U. S. 1100 (1994). Rather than then proceed with a federal habeas claim, respondent elected to pursue a motion for delayed reinstatement of appeal, which was denied by the Ohio Supreme Court on September 28, 1994, 70 Ohio St. 3d 1211, 639 N. E. 2d 110, as was his subsequent motion for reconsideration in the Ohio Supreme Court on November 9, 1994, 71 Ohio St. 3d 1407, 641 N. E. 2d 204. We denied review on May 30, 1995. 515 U. S. 1105.

Respondent does not contest that he then did not commence any effort in the United States District Court until after the State, on October 27, 1995, scheduled his execution for January 25, 1996. Citing an "irreparable rift" with his counsel of eight years, respondent thereupon went to the District Court and on November 17, 1995, requested that Judge Matia appoint new counsel for the preparation and filing of a habeas petition. That request was granted on December 19, 1995. Such counsel on January 4, 1996, moved for a stay of execution pending final disposition of respondent's yet-to-be-filed habeas petition. On January 19, 1996, assuming that respondent had exhausted his state postconviction remedies as of September 28, 1994—when the Ohio

Supreme Court denied his aforementioned motion—Judge Matia concluded that respondent had engaged in "inexcusable" and "dilatory behavior" by doing "nothing for more than one year" before returning to federal court. No. 1:95CV2415 (ND Ohio, Jan. 19, 1996), p. 1. Relying on our decision in *McFarland* v. *Scott*, 512 U. S. 849 (1994), Judge Matia refused to grant the stay request.

On respondent's motion, however, the Sixth Circuit granted a stay on January 23, 1996. Its only explanation was that "[a]fter careful consideration of the [parties' submissions], the motion for the stay of execution is granted until April 1, 1996, or until fifteen days after a petition for a writ of habeas corpus is filed in the district court, whichever first occurs." No. 96–3076 (CA6, filed Jan. 23, 1996), p. 1.

I would grant the State's motion to vacate this stay. The Sixth Circuit acted effectively without explanation and without any reference to the inequitable conduct described by the District Court. Respondent requested a stay not so that the District Court could consider a pending habeas petition, but so that new counsel could "properly investigate and present to the Court the proper grounds for habeas relief." No. 1:95CV2415 (ND Ohio, Jan. 4, 1996), p. 1. We noted in *McFarland*, *supra*, that 21 U. S. C. § 848(q)(4)(B) (1988 ed.) "grants indigent capital defendants a mandatory right to qualified legal counsel" in federal habeas proceedings. 512 U. S., at 854. We accordingly held that "once a capital defendant invokes his right to appointed counsel, a federal court . . . has jurisdiction under [28 U. S. C.] § 2251 to enter a stay of execution." *Id.*, at 858.

We made clear, however, that a capital habeas petitioner within the purview of § 848(q)(4)(B) had no automatic entitlement to such a stay:

> "Section 2251 does not mandate the entry of a stay, but dedicates the exercise of stay jurisdiction to the sound discretion of a federal court. Under ordinary circumstances, a capital defendant presumably will have sufficient time to request the appointment of counsel and file a formal habeas petition prior to his scheduled execution. But the right to counsel necessarily includes a right for that counsel meaningfully to research and present a defendant's habeas claims. Where this opportunity is not afforded, '[a]pproving the execution of a defendant before his [petition] is decided on the merits would

> clearly be improper.' On the other hand, if a dilatory capital defendant inexcusably ignores this opportunity and flouts the available processes, a federal court presumably would not abuse its discretion in denying a stay of execution." *Ibid.* (quoting *Barefoot* v. *Estelle*, 463 U. S. 880, 889 (1983)) (citation omitted).

This recognizes, as we have emphasized elsewhere, that a habeas petitioner requesting a stay of execution "seeks an equitable remedy" and that "[e]quity must take into consideration the State's strong interest in proceeding with its judgment and [a habeas petitioner's] obvious attempt at manipulation." *Gomez* v. *United States Dist. Court for the Northern Dist. of Cal.*, 503 U. S. 653, 654 (1992) *(per curiam)*.

These principles must be brought to bear on this case. The State has, as noted, a strong interest in executing its duly acquired judgment, which was made final in 1986. Respondent's interest, on the other hand, is entirely indeterminate and for all we know nonexistent. He seeks additional time not in order to elaborate on a known claim, but in order to develop a claim, which may or may not be possible. If this is sufficient to outweigh the State's interest in proceeding with its judgment, executions could be stayed indefinitely. If that were not enough, as the District Court (which was familiar with respondent and his tactics) concluded, the face of the record plainly reveals evidence of inequitable conduct by respondent. He twice engaged in dilatory maneuvers—in 1992 by waiting "until literally hours before the execution to begin [his] federal court procedures" and, in the present proceeding, by waiting until the State had again set an execution date before returning to federal court to point to what he terms an "irreparable rift" with his counsel of eight years and to seek a stay under *McFarland*, *supra*. In these circumstances, it is my view that the Court of Appeals abused its discretion in bringing the State's orderly procedures once again to a halt.

JANUARY 26, 1996

Dismissal Under Rule 46

No. 94–804. UNITED STATES DEPARTMENT OF JUSTICE ET AL. *v.* ROSENFELD. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 57 F. 3d 803.

FEBRUARY 1, 1996

Miscellaneous Order

No. A–606 (95–1201). LOPEZ ET AL. *v.* MONTEREY COUNTY, CALIFORNIA, ET AL. Appeal from D. C. N. D. Cal. Application for stay of modification of an injunction filed November 1, 1995, by the United States District Court for the Northern District of California, case No. C–91–20559–RMW, presented to JUSTICE O'CONNOR, and by her referred to the Court, granted pending action by this Court on the statement as to jurisdiction. Should the appeal be dismissed or the judgment affirmed, this order shall terminate automatically. If probable jurisdiction is noted or postponed, this order shall continue in effect pending the sending down of the judgment of this Court.

FEBRUARY 6, 1996

Miscellaneous Order

No. A–624. ABRAMS ET AL. *v.* JOHNSON ET AL. D. C. S. D. Ga. Application for stay pending appeal, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

FEBRUARY 13, 1996

Miscellaneous Order

No. 95–124. DENVER AREA EDUCATIONAL TELECOMMUNICATIONS CONSORTIUM, INC., ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 95–227. ALLIANCE FOR COMMUNITY MEDIA ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 973.] Motion of Time Warner Cable for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

FEBRUARY 15, 1996

Certiorari Denied

No. 95–7919 (A–679). HORSLEY *v.* THOMPSON, WARDEN. Sup. Ct. Ala. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied.

FEBRUARY 20, 1996

Dismissals Under Rule 46

No. 95–901. TIG INSURANCE GROUP ET AL. *v.* INFANTINO. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 66 F. 3d 335.

No. 95–270. WORCESTER COUNTY, MARYLAND, ET AL. *v.* CANE ET AL. C. A. 4th Cir. Certiorari dismissed as to James Purnell under this Court's Rule 46.1. Reported below: 59 F. 3d 165.

Certiorari Granted—Vacated and Remanded

No. 95–156. UNITED STATES *v.* MUSCHIK. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Neal* v. *United States*, *ante*, p. 284. Reported below: 49 F. 3d 512.

No. 95–390. SYLVESTER ET AL. *v.* BRYANT ET AL. C. A. 3d Cir. Motion of Conference of Chief Justices for leave to file a brief as *amicus curiae* granted. Certiorari granted, judgment vacated, and case remanded to consider the question of mootness. Reported below: 57 F. 3d 308.

No. 95–6731. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 66 F. 3d 327.

No. 95–6751. SMITH *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 63 F. 3d 956.

No. 95–6809. STERLING *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 61 F. 3d 1189.

No. 95–7072. COLON *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for fur-

ther consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 60 F. 3d 41.

Miscellaneous Orders

No. A–584. NEW MEXICO DEPARTMENT OF HUMAN SERVICES ET AL. *v.* JOSEPH A. ET AL., BY THEIR NEXT FRIEND, WOLFE, ET AL. C. A. 10th Cir. Application for stay, addressed to JUSTICE SCALIA and referred to the Court, denied.

No. A–603. JENSEN *v.* UNITED STATES. Application for stay of execution of sentence, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. A–667. APACHE CORP. *v.* MOORE ET AL. Application for stay of enforcement of the judgment of the Court of Appeals of Texas, Seventh District, case No. 07–93–0069–CV, entered July 29, 1994, presented to JUSTICE SCALIA, and by him referred to the Court, granted pending the timely filing and disposition by this Court of a petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay terminates automatically. In the event the petition for writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

No. D–1607. IN RE DISBARMENT OF MORRISON. Charles T. Morrison, Jr., of Los Angeles, Cal., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on November 6, 1995 [*ante*, p. 961], is discharged.

No. D–1638. IN RE DISBARMENT OF BACHSTEIN. Harry Samuel Bachstein, Jr., of Tucson, Ariz., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1639. IN RE DISBARMENT OF FARRELL. Gary Farrell, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1640. IN RE DISBARMENT OF BENTON. James Robert Benton, of Jonesboro, Ga., is suspended from the practice of law

in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1641. IN RE DISBARMENT OF MARCUS. Martin B. Marcus, of Oak Park, Mich., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1642. IN RE DISBARMENT OF O'KEEFE. Michael P. O'Keefe, of Lenexa, Kan., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1643. IN RE DISBARMENT OF STANLEY. Christopher Danahy Stanley, of Cleveland, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1644. IN RE DISBARMENT OF GUTH. Milton Jerome Guth, of Cleveland, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1645. IN RE DISBARMENT OF SCHOUMAN. James F. Schouman, of Dearborn, Mich., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1646. IN RE DISBARMENT OF GLOVER. Paul L. Glover, of Downers Grove, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1647. IN RE DISBARMENT OF MCCLOSKEY. John Thomas McCloskey, of Farmington Hills, Mich., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1648. IN RE DISBARMENT OF SWANO. William Allen Swano, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1649. IN RE DISBARMENT OF STIGLER. David D. Stigler, of Fort Worth, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1650. IN RE DISBARMENT OF GERDEMAN. James M. Gerdeman, of Lubbock, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1651. IN RE DISBARMENT OF PIPER. James Patrick Piper, of Dallas, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1652. IN RE DISBARMENT OF ALLEN. James Trueman Allen, of El Paso, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1653. IN RE DISBARMENT OF BASTINE. Volly C. Bastine, Jr., of Houston, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1654. IN RE DISBARMENT OF KELLEHER. James J. Kelleher, of East Northport, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–40. DAVIS *v.* BROWNER, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY;

No. M–41. JAMHOURY *v.* MATHEIS ET AL.;
No. M–42. MUSSER *v.* DAMROW ET AL.; and
No. M–43. CROUCH *v.* COLORADO. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 95–157. UNITED STATES *v.* ARMSTRONG ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 942.] Motion of Washington Legal Foundation et al. for leave to file a brief as *amici curiae* granted.

No. 95–345. UNITED STATES *v.* URSERY. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1070.] Motion for appointment of counsel granted, and it is ordered that Lawrence J. Emery, Esq., of Lansing, Mich., be appointed to serve as counsel for respondent in this case.

No. 95–388. BROWN ET AL. *v.* PRO FOOTBALL, INC., DBA WASHINGTON REDSKINS, ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1021.] Motions of Screen Actors Guild, Inc., et al. and National Hockey League Players Association et al. for leave to file briefs as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–566. MONTANA *v.* EGELHOFF. Sup. Ct. Mont. [Certiorari granted, *ante*, p. 1021.] Motion of American Alliance for Rights and Responsibilities et al. for leave to file a brief as *amici curiae* granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 95–754. MEDTRONIC, INC. *v.* LOHR ET VIR; and
No. 95–886. LOHR ET VIR *v.* MEDTRONIC, INC. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1087.] Motion of Medtronic, Inc., to dispense with printing the joint appendix granted.

No. 95–897. AUER ET AL. *v.* ROBBINS ET AL. C. A. 8th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 95–5257. ORNELAS ET AL. *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante*, p. 963.] Motion of the Solicitor General for divided argument granted.

No. 95–7085. GUESS *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO. C. A. 6th Cir.; and

No. 95–7123. ATTWOOD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Motions of petitioners for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioners are allowed until March 12, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 95–7134. HARDY ET UX. *v.* CITY OF ORLANDO. C. A. 11th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 12, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 95–7070. IN RE BROWN;
No. 95–7310. IN RE MCCALL;
No. 95–7325. IN RE PRICE;
No. 95–7363. IN RE NANAYAKKARA; and
No. 95–7535. IN RE KIRBY. Petitions for writs of habeas corpus denied.

No. 95–6982. IN RE ELLIS;
No. 95–7006. IN RE CRAIG;
No. 95–7225. IN RE TAL; and
No. 95–7299. IN RE SAMPLE. Petitions for writs of mandamus denied.

No. 95–7537. IN RE MOSES. Petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 95–992. TURNER BROADCASTING SYSTEM, INC., ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. Appeal from D. C. D. C. Probable jurisdiction noted. Reported below: 910 F. Supp. 734.

Certiorari Granted

No. 95–938. IMMIGRATION AND NATURALIZATION SERVICE *v.* YUEH-SHAIO YANG. C. A. 9th Cir. Certiorari granted. Reported below: 58 F. 3d 452.

No. 95–6556. OLD CHIEF *v.* UNITED STATES. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 56 F. 3d 75.

Certiorari Denied

No. 94–8233. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 36 F. 3d 1095.

No. 94–8475. BOLLWAGE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 47 F. 3d 431.

No. 94–8797. FLANAGAN *v.* UNITED STATES; and
No. 94–8839. KIKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 F. 3d 65.

No. 94–9315. CICHON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 269.

No. 94–9342. HOFER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 48 F. 3d 1222.

No. 94–9458. BEASLEY *v.* UNITED STATES; and
No. 94–9684. HILLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 332.

No. 95–484. FISCHBACH & MOORE, INC. *v.* MOORE (two judgments); and
No. 95–1020. MOORE *v.* FISCHBACH & MOORE, INC. C. A. 9th Cir. Certiorari denied. Reported below: Nos. 95–484 (first judgment) and 95–1020, 53 F. 3d 1054; No. 95–484 (second judgment), 53 F. 3d 339.

No. 95–527. FREEDOM FROM RELIGION FOUNDATION, INC., ET AL. *v.* COLORADO ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 898 P. 2d 1013.

No. 95–619. ALZANKI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 54 F. 3d 994.

No. 95–630. BAIRD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 63 F. 3d 1213.

No. 95–693. MULLIS *v.* UNITED STATES; and
No. 95–6419. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 312.

No. 95–696. ZUSPANN *v.* BROWN, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 60 F. 3d 1156.

No. 95–700. SOFAMOR DANEK GROUP, INC. *v.* GAUS ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 61 F. 3d 929.

No. 95–713. QANTAS AIRWAYS LTD. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 62 F. 3d 385.

No. 95–747. MISURA *v.* COUNTY OF EL DORADO, ON BEHALF OF WOODS, A MINOR CHILD. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 33 Cal. App. 4th 73, 38 Cal. Rptr. 2d 908.

No. 95–748. HOECK *v.* CITY OF PORTLAND. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 781.

No. 95–753. RUSSELL ET AL. *v.* HILTZ. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 175.

No. 95–770. TINO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 664.

No. 95–773. DEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 660.

No. 95–774. TIME WARNER ENTERTAINMENT CO., L. P. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 95–775. NATIONAL CABLE TELEVISION ASSN., INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 151.

No. 95–782. SSC CORP. *v.* TOWN OF SMITHTOWN ET AL.; and

No. 95–1015. TOWN OF SMITHTOWN ET AL. *v.* SSC CORP. C. A. 2d Cir. Certiorari denied. Reported below: 66 F. 3d 502.

No. 95–783. OKLAHOMA *v.* BELL. Ct. Crim. App. Okla. Certiorari denied.

No. 95–786. CITY OF PORTLAND, OREGON *v.* HUSSEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 1260.

No. 95–795. NASATKA *v.* DELTA SCIENTIFIC CORP. (two judgments). C. A. Fed. Cir. Certiorari denied. Reported below: 58 F. 3d 1578 (first judgment).

No. 95–807. JONES *v.* BALTIMORE CITY POLICE DEPARTMENT ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 103 Md. App. 771.

No. 95–811. LOKEN *v.* CENTURY 21-AWARD PROPERTIES. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 36 Cal. App. 4th 263, 42 Cal. Rptr. 2d 683.

No. 95–821. MARTIN, GUARDIAN AND CONSERVATOR OF MARTIN *v.* MARTIN ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 450 Mich. 204, 538 N. W. 2d 399.

No. 95–824. MEYER *v.* SHEARSON LEHMAN BROTHERS, INC., FKA SHEARSON LEHMAN HUTTON, INC. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 341.

No. 95–834. SHOP 'N SAVE WAREHOUSE FOODS, INC. *v.* UNITED FOOD AND COMMERCIAL WORKERS, AFL–CIO–CLC, LOCAL UNION NO. 88. C. A. 8th Cir. Certiorari denied. Reported below: 61 F. 3d 632.

No. 95–837. JORDAN *v.* HAWKER DAYTON CORP. ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 62 F. 3d 29.

No. 95–838. COLLINS ET AL. *v.* CITY OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 236.

No. 95–842. RAMSDELL *v.* MACHIAS SAVINGS BANK ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 64 F. 3d 5.

No. 95–843. BUSH *v.* JONES ET AL. Ct. App. Mich. Certiorari denied.

No. 95–849. CRANDON *v.* DUNNICK, COMMISSIONER OF THE KANSAS BANKING COMMISSION. Sup. Ct. Kan. Certiorari denied. Reported below: 257 Kan. 727, 897 P. 2d 92.

No. 95–852. TYUS ET AL. *v.* BOSLEY, MAYOR, ST. LOUIS, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 54 F. 3d 1345.

No. 95–854. LOWE'S MARKETS, INC., DBA ST. HELENS SHOP N' KART *v.* MACKILLOP ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 58 F. 3d 1441.

No. 95–855. BAIR, DIRECTOR, IOWA DEPARTMENT OF REVENUE AND FINANCE *v.* BURLINGTON NORTHERN RAILROAD CO. C. A. 8th Cir. Certiorari denied. Reported below: 60 F. 3d 410.

No. 95–859. BARBOUR *v.* DYNAMICS RESEARCH CORP. C. A. 1st Cir. Certiorari denied. Reported below: 63 F. 3d 32.

No. 95–862. FRICKER *v.* NEW YORK CITY OFF TRACK BETTING CORPORATION ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 213 App. Div. 2d 590, 624 N. Y. S. 2d 928.

No. 95–869. CHUMS, LTD. *v.* SNUGZ/USA, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 64 F. 3d 669.

No. 95–872. TRAYWICK *v.* MEDICAL UNIVERSITY OF SOUTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 67 F. 3d 297.

No. 95–873. THOMAS *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–883. WEST OF ENGLAND SHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSN. (LUXEMBOURG) *v.* MOREWITZ, AS ADMINISTRATOR OF THE ESTATES OF PASSALIS ET AL., DECEASED. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 1356.

No. 95–885. MINOR *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 395.

No. 95–888. KANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM *v.* ESTATE OF MORGAN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 61 F. 3d 608.

No. 95–889. KUHNS *v.* MERIDIAN BANCORP, INC., SUCCESSOR TO THE FIRST NATIONAL BANK OF ALLENTOWN. C. A. 3d Cir. Certiorari denied. Reported below: 68 F. 3d 456.

No. 95–890. UNITED STATES EX REL. HINDO *v.* UNIVERSITY OF HEALTH SCIENCES/CHICAGO MEDICAL SCHOOL ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 65 F. 3d 608.

No. 95–893. SCHNABOLK ET AL. *v.* SECURITRON MAGNALOCK CORP. C. A. 2d Cir. Certiorari denied. Reported below: 65 F. 3d 256.

No. 95–895. MILLER *v.* DEMUTH. Super. Ct. Pa. Certiorari denied. Reported below: 438 Pa. Super. 437, 652 A. 2d 891.

No. 95–898. SENTER *v.* HUGHES AIRCRAFT CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 340.

No. 95-900. MUTUAL TRADING CORP. ET AL. *v.* UNIROYAL GOODRICH TIRE CORP. C. A. 7th Cir. Certiorari denied. Reported below: 63 F. 3d 516.

No. 95-902. SOMERSET COUNTY *v.* ARAVANIS. Ct. App. Md. Certiorari denied. Reported below: 339 Md. 644, 664 A. 2d 888.

No. 95-910. DISTRICT OF COLUMBIA ET AL. *v.* COVINGTON ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 57 F. 3d 1101.

No. 95-912. HIATT ET AL. *v.* UNION PACIFIC RAILROAD CO. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 65 F. 3d 838.

No. 95-917. ROBERTSON ET AL. *v.* MOENCH. C. A. 3d Cir. Certiorari denied. Reported below: 62 F. 3d 553.

No. 95-920. VENTURA ET AL. *v.* MORALES, ATTORNEY GENERAL OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 63 F. 3d 358.

No. 95-923. SECURITY MANAGEMENT CORP. *v.* BALTIMORE COUNTY, MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 104 Md. App. 234, 655 A. 2d 1326.

No. 95-926. MARK I MARKETING CORP. ET AL. *v.* R. R. DONNELLEY & SONS CO. C. A. Fed. Cir. Certiorari denied. Reported below: 66 F. 3d 285.

No. 95-927. IN RE GUY. Sup. Ct. Del. Certiorari denied. Reported below: 670 A. 2d 1338.

No. 95-930. MARIC *v.* ST. AGNES HOSPITAL CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 65 F. 3d 310.

No. 95-932. CLAY *v.* COOPER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 905.

No. 95-933. KEAT *v.* CHAVEZ ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 34 Cal. App. 4th 1406, 41 Cal. Rptr. 2d 72.

No. 95-934. JOHNSON *v.* JOHNSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 60 F. 3d 828.

No. 95–935. RAM *v.* DE GALAN ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 95–936. HOCKER *v.* DEPARTMENT OF TRANSPORTATION. C. A. Fed. Cir. Certiorari denied. Reported below: 64 F. 3d 676.

No. 95–937. COSSETT ET UX. *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL. Sup. Ct. Ohio. Certiorari denied. Reported below: 74 Ohio St. 3d 1416, 655 N. E. 2d 737.

No. 95–941. COFFIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 95–943. AMERICAN ATLAS CORP. *v.* ALLEGHENY COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY. C. A. 3d Cir. Certiorari denied. Reported below: 68 F. 3d 456.

No. 95–947. NEWSOM ET AL. *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 95–956. FLORIDA *v.* MCLEOD. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 664 So. 2d 983.

No. 95–960. ALABAMA *v.* JOHNSON, DISTRICT JUDGE FOR JEFFERSON COUNTY, ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 669 So. 2d 205.

No. 95–967. PIPER, JAFFRAY & HOPWOOD, INC. *v.* NIELSEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 66 F. 3d 145.

No. 95–968. EINZIGER *v.* JACOBS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 67 F. 3d 291.

No. 95–979. CREQUE *v.* CREQUE. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 95–980. CUSTOMER CO. *v.* CITY AND COUNTY OF SACRAMENTO. Sup. Ct. Cal. Certiorari denied. Reported below: 10 Cal. 4th 368, 895 P. 2d 900.

No. 95–981. PRITZLAFF *v.* ARCHDIOCESE OF MILWAUKEE ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 194 Wis. 2d 303, 533 N. W. 2d 780.

No. 95–982. MCWHORTER *v.* ATTORNEY GRIEVANCE BOARD OF MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 449 Mich. 130, 534 N. W. 2d 480.

No. 95–983. GRIFFIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 826.

No. 95–985. ARVELO *v.* AMERICAN INTERNATIONAL INSURANCE CO. C. A. 1st Cir. Certiorari denied. Reported below: 66 F. 3d 306.

No. 95–986. HALE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 63 F. 3d 1478.

No. 95–987. GAREN *v.* BOARD OF BAR EXAMINERS OF NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 111 Nev. 1716, 916 P. 2d 198.

No. 95–989. HEARTHSIDE BAKING CO., DBA MAURICE LENELL COOKING CO. *v.* BADER'S DUTCH BISCUIT CO., INC. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 666.

No. 95–993. DANIELS, SALTZ, MONGELUZZI & BARRETT, LTD. *v.* NEWCOMB ET VIR. C. A. 3d Cir. Certiorari denied. Reported below: 67 F. 3d 292.

No. 95–994. TYSON FOODS, INC., ET AL. *v.* WLR FOODS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 65 F. 3d 1172.

No. 95–996. MALOT *v.* ROY F. WESTON, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 64 F. 3d 676.

No. 95–999. ALLUM *v.* BANK OF AMERICA CORP. ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–1005. MORATA *v.* UNITED STATES POSTAL SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 72.

No. 95–1006. HERZOG *v.* DAMRON. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 211.

No. 95–1013. HUET-VAUGHN *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 43 M. J. 105.

No. 95–1019. KNIGHTEN *v.* TODD ELECTRIC, INC., ET AL. Ct. App. La., 1st Cir. Certiorari denied.

No. 95–1021. STEWART *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 916.

No. 95–1022. VITELA *v.* TEXAS (two judgments). Ct. App. Tex., 1st Dist. Certiorari denied.

No. 95–1029. DUBRIA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–1032. BEREND ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 59 F. 3d 178.

No. 95–1033. BALLY *v.* KEMNA, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 65 F. 3d 104.

No. 95–1039. CHRISTENSEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 F. 3d 326.

No. 95–1045. MCBANE *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 904 S. W. 2d 548.

No. 95–1048. SPAULDING ET AL. *v.* BARRY, MAYOR OF THE DISTRICT OF COLUMBIA, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 70 F. 3d 638.

No. 95–1050. DICK *v.* PEOPLES BANK OF BLOOMINGTON. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 95–1052. WEISSMAN ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 31.

No. 95–1055. UHLRIG ET AL. *v.* HARDER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 64 F. 3d 567.

No. 95–1057. GERSTEN *v.* RUNDLE, STATE ATTORNEY, DADE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1389.

No. 95–1060. SALB *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 819.

No. 95–1061. TILBURY ET AL. *v.* MULTNOMAH COUNTY, OREGON, ET AL. Sup. Ct. Ore. Certiorari denied. Reported below: 322 Ore. 112, 902 P. 2d 577.

No. 95–1067. REGNANTE *v.* DIDOMENICO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 66 F. 3d 308.

No. 95–1071. WILLIAMS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 43 M. J. 348.

No. 95–1074. KELLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 68 F. 3d 483.

No. 95–1076. BUMPASS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 1099.

No. 95–1077. AURISPA ET AL. *v.* TEXAS DEPARTMENT OF COMMERCE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 469.

No. 95–1088. TANNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 61 F. 3d 231.

No. 95–1091. ANDERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 F. 3d 1428.

No. 95–1093. HOLLOWAY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 43 M. J. 397.

No. 95–1108. DENIKOV ET AL. *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 269 Ill. App. 3d 1159, 685 N. E. 2d 466.

No. 95–1112. CARREIRO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 68 F. 3d 990.

No. 95–1148. GREAT STATE BEVERAGES, INC. *v.* WENNERS. Sup. Ct. N. H. Certiorari denied. Reported below: 140 N. H. 100, 663 A. 2d 623.

No. 95–5004. CLAWSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 51 F. 3d 273.

No. 95–5358. REIGLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 53 F. 3d 1284.

No. 95–5410. STONEKING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 60 F. 3d 399.

No. 95–5637. KAHLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1071.

No. 95–5750. DELAMOTTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 818.

No. 95–5849. PALACIOS-CASQUETE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 557.

No. 95–5853. WIMS ET AL. *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 10 Cal. 4th 293, 895 P. 2d 77.

No. 95–5901. CLAYTON *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 392.

No. 95–6086. SAN MIGUEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 171.

No. 95–6104. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 53 F. 3d 769.

No. 95–6131. VELASQUEZ-VELASQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 31.

No. 95–6149. DORMESCORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 31.

No. 95–6266. THOMAS *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 1385.

No. 95–6324. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 399.

No. 95–6393. WEIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 1031.

No. 95–6414. TAYLOR *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 666 So. 2d 73.

No. 95–6449. DOWNING *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 33 Cal. App. 4th 1641, 40 Cal. Rptr. 2d 176.

No. 95–6466. IRVING *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 59 F. 3d 23.

No. 95–6524. AGUBATA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 60 F. 3d 1081.

No. 95–6577. MCGRATH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 1005.

No. 95–6605. RASHID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 314.

No. 95–6607. BOSTIAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 474.

No. 95–6608. PAZMINO-MARQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1112.

No. 95–6611. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1111 and 1112.

No. 95–6653. MCDERMOTT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 64 F. 3d 1448.

No. 95–6659. HOMRICH *v.* UNITED STATES; and
No. 95–6967. REYES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 171.

No. 95–6687. REYES-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 321.

No. 95–6698. PENNY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 60 F. 3d 1257.

No. 95–6700. HEMKEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 62 F. 3d 1422.

No. 95–6718. STANLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 183.

No. 95–6746. KINDER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 64 F. 3d 757.

No. 95–6764. BRETT *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 126 Wash. 2d 136, 892 P. 2d 29.

No. 95–6811. TRAVAGLIA *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 541 Pa. 108, 661 A. 2d 352.

No. 95–6812. SENA-MENDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 182.

No. 95–6819. DAVIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 10 Cal. 4th 463, 896 P. 2d 119.

No. 95–6841. SHULZE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 58 F. 3d 1284.

No. 95–6847. NADAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 667.

No. 95–6851. STANO *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 51 F. 3d 942.

No. 95–6861. MILLER *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 541 Pa. 531, 664 A. 2d 1310.

No. 95–6887. MOORE *v.* TENNESSEE ET AL. Cir. Ct. Maury County, Tenn. Certiorari denied.

No. 95–6891. SWEED *v.* 73RD LEGISLATIVE OF TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 466.

No. 95–6892. STRICKLAND *v.* RANKIN COUNTY CORRECTIONAL FACILITY ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–6898. RIGGINS *v.* GIVENS ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–6899. SHIYR *v.* MISSOURI ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 62 F. 3d 1421.

No. 95–6905. ESPARZA *v.* ELLIOTT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6908. GAMBLE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 659 So. 2d 242.

No. 95–6913. JONES, AKA ALI-ABDUR'RAHMAN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 95–6917. COULTER *v.* JONES, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 60 F. 3d 1499.

No. 95–6919. LUMPKIN *v.* DRAGOVICH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–6929. CARSON *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 52 F. 3d 1173.

No. 95–6930. LOPES *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 660 A. 2d 707.

No. 95–6934. HEIMERMANN *v.* CALIFORNIA FEDERAL BANK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 69 F. 3d 539.

No. 95–6943. MCREYNOLDS *v.* COMMISSIONER OF SOCIAL SERVICES OF THE CITY OF NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 86 N. Y. 2d 886, 659 N. E. 2d 774.

No. 95–6944. MILLER *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied.

No. 95–6947. BUSTAMANTE *v.* O'CONNOR ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–6950. VEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied.

No. 95–6957. HALSTEAD *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–6962. SMITH *v.* PARKE, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 59 F. 3d 659.

No. 95–6969. ROCHE *v.* HATCHER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–6970. WRIGHT *v.* PARKE-DAVIS DIVISION OF WARNER-LAMBERT CO. ET AL. Ct. App. Mich. Certiorari denied.

No. 95–6972. BREWER *v.* WARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 51 F. 3d 1519.

No. 95–6986. WILLIAMS *v.* SKANDALAKIS ET AL. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 693, 461 S. E. 2d 226.

No. 95–6990. JEFFRIES *v.* HUNDLEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 95–6995. WASHINGTON *v.* LEBLANC, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–7003. WILLIAMS *v.* RESSEAU, SHERIFF, PUTNAM COUNTY, GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 95–7018. SEXTON *v.* HOWARD, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 55 F. 3d 1557.

No. 95–7023. BELL *v.* COOK ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–7024. MCCORMICK *v.* KAYLO, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 321.

No. 95–7027. AMMONS *v.* POLIAK ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–7028. STEPHENSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–7029. WILLIAMS *v.* CALDERON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 52 F. 3d 1465.

No. 95–7031. FLAKES *v.* NORFOLK SOUTHERN CORP. C. A. 11th Cir. Certiorari denied. Reported below: 67 F. 3d 314.

No. 95–7032. DEA *v.* PENNSYLVANIA DEPARTMENT OF TRANSPORTATION. C. A. 3d Cir. Certiorari denied.

No. 95–7033. FROMAL *v.* JACKSON. C. A. 4th Cir. Certiorari denied. Reported below: 52 F. 3d 321.

No. 95–7034. FALES *v.* SEINFELD, ACTING CHIEF JUDGE, WASHINGTON COURT OF APPEALS, DIVISION TWO. Ct. App. Wash. Certiorari denied.

No. 95–7035. MACK *v.* BUFFALO MUNICIPAL CIVIL SERVICE COMMISSION ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–7037. VERDUGO *v.* CALIFORNIA STATE UNIVERSITY AT LOS ANGELES ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–7047. YOUNG *v.* CITY OF CULVER CITY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–7048. ROWSER *v.* LOCAL 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA. C. A. 6th Cir. Certiorari denied. Reported below: 60 F. 3d 829.

No. 95–7053. MOSBY, AKA MUHAYMIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 60 F. 3d 454.

No. 95–7055. MENDOZA-FIGUEROA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 65 F. 3d 691.

No. 95–7060. NICOLAISON *v.* ERICKSON. C. A. 8th Cir. Certiorari denied. Reported below: 65 F. 3d 109.

No. 95–7064. BROOKS *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 95–7069. QUEEN *v.* KLEVENHAGEN, SHERIFF, HARRIS COUNTY, TEXAS. C. A. 5th Cir. Certiorari denied.

No. 95–7075. MURPHY *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–7077. CLUCK *v.* OSHEROW (two judgments). C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 395.

No. 95–7078. BRAUN *v.* WILLARD. Ct. App. Kan. Certiorari denied. Reported below: 21 Kan. App. 2d xxxii, 897 P. 2d 198.

No. 95–7080. BAKER *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 272 Mont. 273, 901 P. 2d 54.

No. 95–7082. SQUIRE *v.* CASEY, GERRY, CASEY, WESTBROOK, REED AND HUGHES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 336.

No. 95–7083. BLACKSTON *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–7087. GEORGE *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 95–7094. HOLLINESS *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–7096. WYNN *v.* AC ROCHESTER, DIVISION OF GENERAL MOTORS CORP. C. A. 2d Cir. Certiorari denied. Reported below: 66 F. 3d 308.

No. 95–7097. POWERS *v.* FLOYD. Ct. App. Tex., 10th Dist. Certiorari denied. Reported below: 904 S. W. 2d 713.

No. 95–7100. BRADLEY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 95–7101. MARIAN *v.* CALLES ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–7102. LAW *v.* LAW. Sup. Ct. Va. Certiorari denied.

No. 95–7103. BRADLEY *v.* CANTLEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 61 F. 3d 899.

No. 95–7105. MACRI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 660 So. 2d 713.

No. 95–7107. MUELLER ET AL. *v.* CRUISE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1391.

No. 95–7109. HIGGINS *v.* EHRLICH ET AL. C. A. 10th Cir. Certiorari denied.

No. 95–7110. HINES *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 95–7114. HUNT *v.* CODY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 60 F. 3d 837.

No. 95–7115. BURLEY *v.* GULBRANSON ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–7116. CARR *v.* NAGLE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–7117. ATTWOOD *v.* SPROUSE, SUPERINTENDENT, MADISON CORRECTIONAL INSTITUTION. C. A. 11th Cir. Certiorari denied.

No. 95–7118. CANNON *v.* MILLER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 165.

No. 95–7120. HERNANDEZ *v.* NEW MEXICO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 64 F. 3d 669.

No. 95–7121. ARVIN-THORNTON *v.* PHILIP MORRIS PRODUCTS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 655.

No. 95–7122. ANDERSON *v.* LEWIS, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 95–7124. CANTRELL *v.* NORCAL/SAN BERNARDINO, INC. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–7125. ARNDT *v.* PENNSYLVANIA STATE POLICE. C. A. 3d Cir. Certiorari denied.

No. 95–7128. TOBIN *v.* CASCO NORTHERN BANK, N. A. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 663 A. 2d 1.

No. 95–7132. STEEL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–7136. EVANS *v.* BEASON, JUDGE. C. A. 9th Cir. Certiorari denied.

No. 95–7139. WARREN *v.* ALEXANDER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–7142. PUDDER *v.* IRWIN. C. A. 11th Cir. Certiorari denied.

No. 95–7143. MALLETT *v.* LEBLANC, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 95–7144. MELKONIAN ET AL. *v.* TRUCK INSURANCE EXCHANGE ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–7146. MERHI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 326.

No. 95–7148. NWADIEI *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 272 Ill. App. 3d 1111, 688 N. E. 2d 389.

No. 95–7149. VOM BAUR *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 664.

No. 95–7151. SWINT *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 95–7156. SOLEY *v.* SOLEY. Ct. App. Ohio, Lucas County. Certiorari denied. Reported below: 101 Ohio App. 3d 540, 655 N. E. 2d 1381.

No. 95–7157. SIMMONS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 541 Pa. 211, 662 A. 2d 621.

No. 95–7161. WOODRUFF *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 899 S. W. 2d 443.

No. 95–7162. WILLIAMS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 341 N. C. 1, 459 S. E. 2d 208.

No. 95–7163. WHISENAND *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 37 Cal. App. 4th 1383, 44 Cal. Rptr. 2d 501.

No. 95–7168. WOMACK *v.* DUNN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 66 F. 3d 318.

No. 95–7169. TYSON *v.* MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW. C. A. 3d Cir. Certiorari denied.

No. 95–7170. YOUNG *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 256 Ill. App. 3d 1107, 671 N. E. 2d 836.

No. 95–7172. GASTER *v.* STATE-RECORD CO., INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 656.

No. 95–7173. HUNTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 660 So. 2d 244.

No. 95–7174. GLANT *v.* GLANT. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 651 So. 2d 123.

No. 95–7177. CAMPBELL *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 340 N. C. 612, 460 S. E. 2d 144.

No. 95–7179. MU'MIN *v.* THOMPSON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 66 F. 3d 316.

No. 95–7180. JAFFER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 67 F. 3d 319.

No. 95–7183. MOORE *v.* THOMAS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1247.

No. 95–7184. MATIAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 35 Cal. App. 4th 480, 41 Cal. Rptr. 2d 459.

No. 95–7187. KNIGHT *v.* COURT OF CIVIL APPEALS OF ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 95–7188. MAXSON *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT. Sup. Ct. Cal. Certiorari denied.

No. 95–7192. SWEENEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 661.

No. 95–7193. BRANDLEY *v.* KEESHAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 64 F. 3d 196.

No. 95–7194. BOULDEN *v.* THOMAS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 66 F. 3d 338.

No. 95–7196. SOLEY *v.* SOLEY. Ct. App. Ohio, Wood County. Certiorari denied.

No. 95–7197. GARNER *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 340 N. C. 573, 459 S. E. 2d 718.

No. 95–7204. DILLIER *v.* CALIFORNIA ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 95–7206. HOUSTON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–7207. RUCKEL *v.* CHURCHICH ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–7208. SCHAAF *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 176.

No. 95–7209. PRIHODA *v.* HUSZ. Ct. App. Wis. Certiorari denied. Reported below: 196 Wis. 2d 372, 539 N. W. 2d 135.

No. 95–7210. ORNELAS *v.* MYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 308.

No. 95–7211. DIFRISCO *v.* NEW JERSEY (two judgments). Sup. Ct. N. J. Certiorari denied. Reported below: 137 N. J. 434,

645 A. 2d 734 (first judgment); 142 N. J. 148, 662 A. 2d 442 (second judgment).

No. 95–7216. GREEN *v.* 25TH JUDICIAL DISTRICT PROBATION DEPARTMENT. C. A. 5th Cir. Certiorari denied.

No. 95–7217. JEFFREY *v.* EDINBURG HOSPITAL. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 465.

No. 95–7219. MALIK ET AL. *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 338.

No. 95–7221. MALIK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 95–7223. FORD *v.* LONG, WARDEN. Sup. Ct. Nev. Certiorari denied. Reported below: 111 Nev. 872, 901 P. 2d 123.

No. 95–7227. WOLFE *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET. C. A. 3d Cir. Certiorari denied.

No. 95–7228. DEVON *v.* VAUGHN ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–7229. CANNADY ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 95–7230. BENNETT *v.* CALIFORNIA (two judgments). Sup. Ct. Cal. Certiorari denied.

No. 95–7232. BRAGA *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 95–7233. COOPER *v.* LOMBARDI, DIRECTOR, MISSOURI DIVISION OF ADULT INSTITUTIONS. Sup. Ct. Mo. Certiorari denied.

No. 95–7234. BLACKMON *v.* UNITED STATES; and
No. 95–7239. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 128.

No. 95–7235. MAHDAVI *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–7237. DUPREE *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 319 S. C. 454, 462 S. E. 2d 279.

No. 95–7238. SANTIAGO *v.* WORKMAN. Ct. App. Ohio, Franklin County. Certiorari denied.

No. 95–7240. SIPE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 36 Cal. App. 4th 468, 42 Cal. Rptr. 2d 266.

No. 95–7241. ABBO *v.* ROSSI, MCCREERY & ASSOCIATES, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–7243. SOLLIDAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 399.

No. 95–7244. BAYRON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 67 F. 3d 292.

No. 95–7245. SUTTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 F. 3d 476.

No. 95–7246. YARBOROUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 471.

No. 95–7247. THOMPSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 74 F. 3d 1236.

No. 95–7248. SANTOS URRUTIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1067.

No. 95–7249. VARGAS *v.* GEORGIA (two judgments). Ct. App. Ga. Certiorari denied.

No. 95–7251. KOFF *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 62 F. 3d 1428.

No. 95–7253. SASSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 62 F. 3d 874.

No. 95–7255. PARRAS *v.* RICHARDSON, COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 125.

No. 95–7256. ARCE *v.* GOOD ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 72 F. 3d 122.

No. 95–7259. VIDEA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 467.

No. 95–7261. WALCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 61 F. 3d 635.

No. 95–7264. LITTLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 61 F. 3d 450.

No. 95–7265. CLEMMONS *v.* STOTTS ET AL. (two judgments). C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 1231.

No. 95–7266. MILLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 67 F. 3d 303.

No. 95–7267. CARTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 469.

No. 95–7268. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 124.

No. 95–7269. BROCKWAY *v.* EAST CENTRAL MENTAL HEALTH SERVICES, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 99 F. 3d 402.

No. 95–7271. GALLEGO-SANCHEZ *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 1st Cir. Certiorari denied.

No. 95–7274. BROWNING-TAYLOR *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 59 F. 3d 182.

No. 95–7276. WATSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 337.

No. 95–7277. BURRUS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 67 F. 3d 300.

No. 95–7278. SUTTON *v.* DETELLA, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 95–7281. O'NEAL *v.* MCANINCH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 663.

No. 95–7285. HILL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 326.

No. 95–7286. GEORGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 471.

No. 95–7287. FELKER *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 52 F. 3d 907.

No. 95–7288. FAULHABER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 66 F. 3d 306.

No. 95–7291. MCLAUGHLIN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 341 N. C. 426, 462 S. E. 2d 1.

No. 95–7292. OTTO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 64 F. 3d 367.

No. 95–7293. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1151.

No. 95–7294. O'NEAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 860.

No. 95–7296. SCHWARTZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 95–7297. WRIGHT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 272 Ill. App. 3d 1033, 651 N. E. 2d 758.

No. 95–7301. BARNETT *v.* MISSOURI DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 54 F. 3d 783.

No. 95–7306. KARIM-PANAHI *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1424.

No. 95–7307. MANGUM *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied. Reported below: 67 F. 3d 80.

No. 95–7308. MULFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1111.

No. 95–7309. MASON *v.* UNITED STATES PAROLE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 472.

No. 95–7311. LOPEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 67 F. 3d 292.

No. 95–7314. HOBBS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 59 F. 3d 179.

No. 95–7318. DANIEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 918.

No. 95–7326. OKWECHIME *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 46 F. 3d 426.

No. 95–7327. RICHARDS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 95–7329. DOLENC *v.* ROLLINS. C. A. 3d Cir. Certiorari denied.

No. 95–7331. ALLICOCK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 342.

No. 95–7332. BERG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 472.

No. 95–7333. CHILDS *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 272 Ill. App. 3d 787, 651 N. E. 2d 252.

No. 95–7334. COWAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 124.

No. 95–7342. OWOLABI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 69 F. 3d 156.

No. 95–7347. BAUTISTA-CHAVARRIAGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 550.

No. 95–7350. HOUSTON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 271 Ill. App. 3d 1158, 688 N. E. 2d 161.

No. 95–7351. FAILOR *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 271 Ill. App. 3d 968, 649 N. E. 2d 1342.

No. 95–7353. HEIRENS *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 271 Ill. App. 3d 392, 648 N. E. 2d 260.

No. 95–7354. GEORGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 F. 3d 297.

No. 95–7359. MISEK-FALKOFF *v.* KELLER. Ct. App. N. Y. Certiorari denied. Reported below: 86 N. Y. 2d 777, 655 N. E. 2d 706.

No. 95–7361. LIRA-ESPINOSA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 309.

No. 95–7370. MINTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 326.

No. 95–7371. HUGHES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1113.

No. 95–7375. FARRIS *v.* HALLAHAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 175.

No. 95–7377. JEFFERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 F. 3d 291.

No. 95–7379. RUIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 310.

No. 95–7380. PRINGLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 57 F. 3d 1073.

No. 95–7382. BERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 F. 3d 1266.

No. 95–7383. COOK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 38 F. 3d 1217.

No. 95–7384. MAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 65 F. 3d 167.

No. 95–7387. HOURIHAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 66 F. 3d 458.

No. 95–7390. TRONDEL-PENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 465.

No. 95–7392. MOBLEY *v.* UNITED STATES; and

No. 95–7488. CHAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 550.

No. 95–7393. KIMBLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 471.

No. 95–7394. MCCONNELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 67 F. 3d 312.

No. 95–7396. IVES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 309.

No. 95–7399. CAMPOS ALVAREZ *v.* UNITED STATES; and
No. 95–7471. PEREZ ZAMORA ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 1420.

No. 95–7401. IVORY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 95–7402. NANCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 F. 3d 298.

No. 95–7403. BURCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 551.

No. 95–7406. SALAAM, AKA MCLAUGHLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 F. 3d 462.

No. 95–7407. SAVAGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 1435.

No. 95–7408. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 F. 3d 462.

No. 95–7410. RIVERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 68 F. 3d 1283.

No. 95–7411. RUFFIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1258.

No. 95–7412. SIMMONS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 F. 3d 535.

No. 95–7415. SCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 68 F. 3d 479.

No. 95–7416. PIERCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 818.

No. 95–7423. NEWTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 810.

No. 95–7426. BOONE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 67 F. 3d 76.

No. 95–7427. CANCEL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1257.

No. 95–7428. BROOKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 66 F. 3d 317.

No. 95–7431. CASTANON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 F. 3d 475.

No. 95–7432. ACOSTA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 67 F. 3d 334.

No. 95–7435. MONTGOMERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 551.

No. 95–7437. LANE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 181.

No. 95–7438. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 64 F. 3d 1213.

No. 95–7439. ADKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 F. 3d 461.

No. 95–7440. BOLTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 68 F. 3d 396.

No. 95–7441. CHURCH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1257.

No. 95–7445. PEVELER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 F. 3d 475.

No. 95–7446. SCOTT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 72 F. 3d 139.

No. 95–7449. KINDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 F. 3d 536.

No. 95–7451. LINDSLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 551.

No. 95–7454. MONTANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 550.

No. 95–7455. HARRIS ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 66 F. 3d 318.

No. 95–7459. STITES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 56 F. 3d 1020.

No. 95–7460. CARBAJAL-CEJA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 F. 3d 481.

No. 95–7462. VALDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 71 F. 3d 405.

No. 95–7466. SANTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 F. 3d 536.

No. 95–7468. GRAY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 95–7470. EICKLEBERRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 95–7476. GLOVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 72 F. 3d 887.

No. 95–7477. DOTSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 73 F. 3d 1108.

No. 95–7479. PUCKETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 661.

No. 95–7487. ARTHUR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 61 F. 3d 1189.

No. 95–7492. SPAGNOULO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1111.

No. 95–7493. REYNOLDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 64 F. 3d 292.

No. 95–7494. RAMIRO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 181.

No. 95–7495. SEGEADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 74 F. 3d 1237.

No. 95–7498. FITZGERALD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 74 F. 3d 1234.

No. 95–7499. DAMRON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 77 F. 3d 475.

No. 95–7500. GRANADA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 51 F. 3d 82.

No. 95–7508. KITCHEYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 336.

No. 95–7513. CHAMBERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 67 F. 3d 299.

No. 95–7515. NUNEZ SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 70 F. 3d 1266.

No. 95–7516. GUZMAN RIVERA ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 68 F. 3d 5.

No. 95–7521. BIGGS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 70 F. 3d 913.

No. 95–7523. ARIAS SANTA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1258.

No. 95–7524. CROSS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 95–7526. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 68 F. 3d 168.

No. 95–7531. MITCHELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 67 F. 3d 1248.

No. 95–7532. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 64 F. 3d 1120.

No. 95–7533. ALBERTO MUNOZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 95–7541. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1258.

No. 95–7549. RANSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 F. 3d 482.

No. 95–7563. BASEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 67 F. 3d 303.

No. 95–7566. SIZEMORE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied.

No. 95–7653. FLOURNOY *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 535 N. W. 2d 354.

No. 95–705. SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* SMITH. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 61 F. 3d 815.

No. 95–726. CONNECTICUT *v.* COLTON. Sup. Ct. Conn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 234 Conn. 683, 663 A. 2d 339.

No. 95–706. BABCOCK & WILCOX CO. ET AL. *v.* ARKWRIGHT-BOSTON MANUFACTURING MUTUAL INSURANCE CO. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 53 F. 3d 762.

No. 95–867. UNITED STATES EX REL. LEBLANC *v.* RAYTHEON CO., INC. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 62 F. 3d 1411.

No. 95–925. ILLINOIS ANTIBIOTICS CO. ET AL. *v.* SCHERING CORP. C. A. 7th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 62 F. 3d 903.

No. 95–714. NATIONWIDE MUTUAL INSURANCE CO. ET AL. *v.* CISNEROS, SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL. C. A. 6th Cir. Motions of National Association of Insurance Commissioners, National Association of Independent Insurers, National Association of Mutual Insurance Companies et al., and Washington Legal Foundation et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 52 F. 3d 1351.

No. 95–909. KOCH OIL CO. *v.* COMMITTEE OF CREDITORS HOLDING UNSECURED CLAIMS AGAINST POWERINE OIL CO.,

DEBTOR IN BANKRUPTCY. C. A. 9th Cir. Motion of U. S. Council on International Banking, Inc., for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 59 F. 3d 969.

No. 95–914. BROIDA *v.* SMITH, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HOROWITZ, DECEASED, ET AL. C. A. 11th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 53 F. 3d 1285.

No. 95–1001. DOYLE, ATTORNEY GENERAL OF WISCONSIN, ET AL. *v.* TIME WARNER CABLE, A DIVISION OF TIME WARNER ENTERTAINMENT CO., L. P. C. A. 7th Cir. Motion of petitioners to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 66 F. 3d 867.

No. 95–918. CHESTER *v.* AMERICAN TELEPHONE & TELEGRAPH CO. C. A. 5th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 68 F. 3d 470.

No. 95–1030. HUGHES, HUBBARD & REED *v.* ROBBS. C. A. 9th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 67 F. 3d 308.

No. 95–6980. SHEPHERD *v.* AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 70 F. 3d 1274.

No. 95–921. SHUMATE *v.* HUFF ET AL. Cir. Ct. Pulaski County, Va. Motion of respondents for award of costs denied. Certiorari denied.

No. 95–972. ROTHENBUSCH *v.* FORD MOTOR CO. C. A. 6th Cir. Motion of National Employment Lawyers Association et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. Reported below: 61 F. 3d 904.

No. 95–1053. WEED *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. 8th Cir. Certiorari denied. JUSTICE STEVENS took no part in the consideration or decision of this petition. Reported below: 61 F. 3d 908.

No. 95–7345. STERLING *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner to amend the petition for writ of certiorari denied. Certiorari denied. Reported below: 68 F. 3d 462.

No. 95–7961 (A–690). SLOAN *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 77 F. 3d 234.

Rehearing Denied

No. 95–634. LOVELL *v.* PLANTERS BANK & TRUST COMPANY OF CLAIBORNE PARISH; and LOVELL *v.* NEWELL ET AL., *ante*, p. 1029;

No. 95–784. PODGURSKI *v.* SUFFOLK COUNTY, NEW YORK, ET AL., *ante*, p. 1048;

No. 95–5600. KELLY *v.* IMMIGRATION AND NATURALIZATION SERVICE, *ante*, p. 992;

No. 95–5801. HUNT *v.* DEPARTMENT OF THE ARMY, *ante*, p. 1050;

No. 95–5852. REED *v.* TEXAS, *ante*, p. 1050;

No. 95–6097. SCALES *v.* LOUISIANA, *ante*, p. 1050;

No. 95–6268. CHIA *v.* MOTOROLA COMMUNICATIONS, INC., *ante*, p. 1013;

No. 95–6369. WEBSTER *v.* CITY OF AMARILLO, TEXAS, ET AL., *ante*, p. 1051;

No. 95–6373. BONIN *v.* CALDERON, WARDEN, ET AL., *ante*, p. 1051;

No. 95–6450. DOLPHIN *v.* STARKMAN, *ante*, p. 1052;

No. 95–6455. RODRIGUEZ *v.* FLORIDA, *ante*, p. 1052;

No. 95–6460. FANTA *v.* CITY OF SEATTLE ET AL., *ante*, p. 1068;

No. 95–6592. HAM *v.* NAGLE, WARDEN, ET AL., *ante*, p. 1055;

No. 95–6603. TURNER *v.* CULLUM, SECRETARY OF VIRGINIA HEALTH AND HUMAN RESOURCES, *ante*, p. 1056;

No. 95–6697. NOBLE *v.* UNITED STATES ET AL., *ante*, p. 1058;

No. 95–6789. DWYER *v.* MILLSAPS, DIRECTOR, COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT FOR TRAVIS COUNTY, TEXAS, ET AL., *ante*, p. 1061;

No. 95–6824. LEA *v.* UNITED STATES, *ante*, p. 1062;

No. 95–6903. BRANCH *v.* UNITED STATES, *ante*, p. 1068; and

No. 95–6940. ONYEJEKWE *v.* UNITED STATES, *ante*, p. 1065. Petitions for rehearing denied.

No. 93–1932. ETIM ET AL. *v.* UNITED STATES, 513 U. S. 815;
No. 94–9114. DUMAGUIN *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 827;
No. 94–9278. PLONEDA *v.* CALIFORNIA, *ante*, p. 829;
No. 95–5702. DUTCHER *v.* SWEENEY, *ante*, p. 946; and
No. 95–6448. FERENC *v.* REINOSA ET AL., *ante*, p. 1031. Motions for leave to file petitions for rehearing denied.

FEBRUARY 23, 1996

Certiorari Denied

No. 95–7992 (A–695). BONIN *v.* CALDERON, WARDEN. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE O'CONNOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 77 F. 3d 1155.

FEBRUARY 26, 1996

Certiorari Granted—Vacated and Remanded

No. 95–6889. KUBOSH *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 63 F. 3d 404.

No. 95–7068. SCHLICKER *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 66 F. 3d 327.

Miscellaneous Orders. (See also No. 95–7186, *ante*, p. 363; and No. 35, Orig., *ante*, p. 365.)

No. D–1608. IN RE DISBARMENT OF HEATH. Disbarment entered. [For earlier order herein, see *ante*, p. 961.]

No. D–1611. IN RE DISBARMENT OF BERNARD. Disbarment entered. [For earlier order herein, see *ante*, p. 984.]

No. D–1614. IN RE DISBARMENT OF BILLINGS. Disbarment entered. [For earlier order herein, see *ante*, p. 985.]

No. D–1616. IN RE DISBARMENT OF KELLEY. Disbarment entered. [For earlier order herein, see *ante*, p. 985.]

No. D–1620. IN RE DISBARMENT OF NELSON. Disbarment entered. [For earlier order herein, see *ante*, p. 986.]

No. D–1622. IN RE DISBARMENT OF LYNCH. James Edward Lynch, of Washington Crossing, Pa., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on December 11, 1995 [*ante*, p. 1025], is discharged.

No. D–1623. IN RE DISBARMENT OF MYERS. Disbarment entered. [For earlier order herein, see *ante*, p. 1025.]

No. D–1624. IN RE DISBARMENT OF WEISS. Disbarment entered. [For earlier order herein, see *ante*, p. 1025.]

No. D–1655. IN RE DISBARMENT OF TANNER. John F. Tanner, of Birmingham, Ala., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1656. IN RE DISBARMENT OF MARKOVITCH. Michael Markovitch, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–44. CROSS *v.* NOLES, WARDEN;

No. M–45. HOCKENBERRY *v.* DUFFY ET AL.;

No. M–46. MOORE ET UX. *v.* CHRISTMAS LOG HOMES ET AL.; and

No. M–47. TIMMONS *v.* COUNTY OF DALLAS ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 95–1012. CALDWELL *v.* AMERICAN BASKETBALL ASSN., INC., ET AL. C. A. 2d Cir. Motion of respondents Don L. Chapman and Diane Munchak Wilson for an order substituting them as executors of the estate of Tedd Munchak, deceased, granted.

No. 95–7694. JONES *v.* FARRINGTON ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* de-

nied. See this Court's Rule 39.8. Petitioner is allowed until March 18, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 95–6503. IN RE HOLCOMB;
No. 95–7324. IN RE SOLIMINE;
No. 95–7338. IN RE TAL; and
No. 95–7388. IN RE MARTINEZ. Petitions for writs of mandamus denied.

Certiorari Granted

No. 95–728. WARNER-JENKINSON CO., INC. *v.* HILTON DAVIS CHEMICAL CO. C. A. Fed. Cir. Certiorari granted. Reported below: 62 F. 3d 1512.

Certiorari Denied

No. 95–618. T. B. D. *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 656 So. 2d 479.

No. 95–652. KIRK, ADMINISTRATRIX OF THE ESTATE OF KIRK, DECEASED, ET AL. *v.* RAYMARK INDUSTRIES, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 61 F. 3d 147.

No. 95–662. COUCH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 171.

No. 95–788. DOE ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 57 F. 3d 1066.

No. 95–808. SOUTHEASTERN EXPRESS CO. ET AL. *v.* TRIAD SYSTEMS CORP. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 1330.

No. 95–846. RUSHTON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 834.

No. 95–896. WASHINGTON SERVICE CONTRACTORS COALITION ET AL. *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 54 F. 3d 811.

No. 95–908. CONTEL CELLULAR INC. ET AL. *v.* LEAF RIVER VALLEY CELLULAR TELEPHONE CO., INC., ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 269 Ill. App. 3d 1137, 685 N. E. 2d 458.

No. 95–945. GUMPORT, TRUSTEE OF THE BANKRUPTCY ESTATE OF TRANSCON LINES *v.* STERLING PRESS, INC. C. A. 9th Cir. Certiorari denied. Reported below: 58 F. 3d 1432.

No. 95–973. JENKINS *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–976. KOLODZIECZAK ET AL. *v.* FRIEND ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 72 F. 3d 1386.

No. 95–1004. CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND *v.* RHEEM MANUFACTURING CO. C. A. 8th Cir. Certiorari denied. Reported below: 63 F. 3d 703.

No. 95–1009. HORTON *v.* MONROE SYSTEMS FOR BUSINESS, INC., ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–1011. MCDANIELS *v.* FLICK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 59 F. 3d 446.

No. 95–1017. GENERAL SIGNAL CORP. *v.* MCI TELECOMMUNICATIONS CORP. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 1500.

No. 95–1024. GETTER *v.* WAL-MART STORES, INC. C. A. 10th Cir. Certiorari denied. Reported below: 66 F. 3d 1119.

No. 95–1026. MURRAY & MURRAY CO., L. P. A. PROFIT-SHARING PLAN AND TRUST, ET AL. *v.* SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY (PERFORMANCE INDUSTRIES, INC., FKA MR. GASKET CO., INC., REAL PARTY IN INTEREST). Ct. App. Ariz. Certiorari denied.

No. 95–1027. MIRIN *v.* EYERLY ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–1038. LEMOND CONSTRUCTION CO. *v.* WHEELER, ADMINISTRATOR OF ESTATE OF WHEELER. Sup. Ct. Ala. Certiorari denied. Reported below: 669 So. 2d 855.

No. 95–1042. KRAEBEL, DBA BARKLEE REALTY CO. *v.* NEW YORK CITY DEPARTMENT OF FINANCE. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 217 App. Div. 2d 416, 629 N. Y. S. 2d 42.

No. 95–1044. NORFOLK & WESTERN RAILWAY CO. ET AL. *v.* CERNEY. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 104 Ohio App. 3d 482, 662 N. E. 2d 827.

No. 95–1046. JENKINS, TRUSTEE OF GREEN RIVER REALTY TRUST *v.* MEETINGHOUSE COOPERATIVE BANK. App. Ct. Mass. Certiorari denied. Reported below: 38 Mass. App. 1113, 647 N. E. 2d 449.

No. 95–1070. CRUMPTON *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 59 F. 3d 1400.

No. 95–1073. ILLINOIS *v.* COATS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 269 Ill. App. 3d 1008, 647 N. E. 2d 1088.

No. 95–1078. CONNETT *v.* JUSTUS ENTERPRISES OF KANSAS, INC., AKA JUSTUS CYLINDER-TECHNOLOGY, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 68 F. 3d 382.

No. 95–1090. FLORIDA *v.* RIVERS ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 660 So. 2d 1360.

No. 95–1092. DOUGLASS *v.* DEPARTMENT OF TRANSPORTATION. C. A. Fed. Cir. Certiorari denied. Reported below: 64 F. 3d 676.

No. 95–1095. FOODSCIENCE CORP. ET AL. *v.* HERSCHLER. C. A. Fed. Cir. Certiorari denied. Reported below: 64 F. 3d 677.

No. 95–1107. BEASLEY *v.* COMMONWEALTH EDISON CO. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 269 Ill. App. 3d 1112, 685 N. E. 2d 446.

No. 95–1120. BOLT *v.* SINGLETON ET AL. C. A. 9th Cir. Certiorari denied.

No. 95–1149. BRAKE *v.* DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT. Sup. Ct. Fla. Certiorari denied. Reported below: 666 So. 2d 142.

No. 95–1171. DESOUZA *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 95–1198. MCNEEL ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE; and NIGHTENGALE ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 833 (first judgment); 65 F. 3d 175 (second judgment).

No. 95–1208. HENRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 664.

No. 95–6211. DUNCAN *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 648 So. 2d 1090.

No. 95–6555. SANCHEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 41.

No. 95–6575. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 56 F. 3d 78.

No. 95–6612. LUNDIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 164.

No. 95–6869. MOGENSEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 65 F. 3d 170.

No. 95–6894. LISENBEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 341.

No. 95–6941. JACOBS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 65 F. 3d 96.

No. 95–7002. ALSTON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 341 N. C. 198, 461 S. E. 2d 687.

No. 95–7065. CROWE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 582, 458 S. E. 2d 799.

No. 95–7258. WHITTLESEY *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 340 Md. 30, 665 A. 2d 223.

No. 95–7270. PURDY *v.* SUPERIOR COURT OF ARIZONA, NAVAJO COUNTY, ET AL. Ct. App. Ariz. Certiorari denied.

No. 95–7272. ROBERSON *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 319.

No. 95–7275. STOKES *v.* KIETHLY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 336.

No. 95–7280. SIKORA *v.* DOE ET AL. C. A. 8th Cir. Certiorari denied.

No. 95–7282. SMITH *v.* KEOHANE, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 67 F. 3d 301.

No. 95–7284. GRAHAM *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 95–7298. TOKHTAMESHEV *v.* AMERICAN NATIONAL CAN CO. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 313.

No. 95–7304. JONES *v.* BLISS ET AL. C. A. 2d Cir. Certiorari denied.

No. 95–7337. VARGAS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 60 F. 3d 835.

No. 95–7397. MAYFIELD *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 95–7404. LAWSON *v.* BLANKENSHIP ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 876.

No. 95–7465. ANDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 181.

No. 95–7480. PASQUALE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 95–7481. SWINT *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–7489. TYLER *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 95–7490. YOUNG *v.* HANSEN ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 68 F. 3d 455.

No. 95–7501. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 69 F. 3d 538.

No. 95–7502. HAYWOOD *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. 11th Cir. Certiorari denied.

No. 95–7520. ABNER *v.* FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 124.

No. 95–7522. WATKIS *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 168.

No. 95–7534. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 471.

No. 95–7548. OLVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 F. 3d 482.

No. 95–7552. BRASHER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1257.

No. 95–7553. BENNETT *v.* BOGAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 812.

No. 95–7561. OSBURN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 332.

No. 95–7567. ENGELKING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 876.

No. 95–7571. CUMMING *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 95–7574. ESTACHE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 125 and 126.

No. 95–7575. DEJESUS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 95–7577. HINTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 69 F. 3d 534.

No. 95–7578. HAZEL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 95–7579. EASTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 1018.

No. 95–7580. HATTEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 68 F. 3d 257.

No. 95–7581. DUBISKY ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 62 F. 3d 182.

No. 95–7582. EDWARDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1257.

No. 95–7584. HARDIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 68 F. 3d 485.

No. 95–7602. MEADOWS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 F. 3d 462.

No. 95–7604. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 70 F. 3d 123.

No. 95–7608. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 F. 3d 475.

No. 95–7609. PRINCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 57 F. 3d 1071.

No. 95–7611. WARD *v.* TURNER. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 322.

No. 95–7613. GLASS *v.* VAUGHN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 13.

No. 95–7614. BURK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 62 F. 3d 1429.

No. 95–7615. MOSS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 860.

No. 95–7617. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 125.

No. 95–7622. WARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 F. 3d 146.

No. 95–7625. NAPERT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 69 F. 3d 534.

No. 95–7632. DAVIS *v.* BRITT, JUDGE, NORTH CAROLINA SUPERIOR COURT, 16B DISTRICT. C. A. 4th Cir. Certiorari denied. Reported below: 68 F. 3d 460.

No. 95–7633. HATCHETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 68 F. 3d 477.

No. 95–7636. BRICE *v.* UNITED STATES PAROLE COMMISSION. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 161.

No. 95–7640. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 69 F. 3d 538.

No. 95–7643. ROSCH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 70 F. 3d 1275.

No. 95–7644. BILES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 126.

No. 95–7648. BENTLEY *v.* SCULLY, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 41 F. 3d 818.

No. 95–7652. ESPINAL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 95–7659. RODRIGUEZ-ORTIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 126.

No. 95–7661. MORNING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 531.

No. 95–7665. DEFRANCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1388.

No. 95–7666. WARNER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 54 F. 3d 788.

No. 95–7667. ZSOFKA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 67 F. 3d 289.

No. 95–7668. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 1285.

No. 95–7669. GRANDLUND *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 507.

No. 95–7671. SHUEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 72 F. 3d 887.

No. 95–7672. OKORO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 95–7677. HANNA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 95–7680. WHITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 F. 3d 545.

No. 95–7683. MILLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 1284.

No. 95–7685. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 63 F. 3d 721.

No. 95–7686. JONES, AKA HACKETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 342.

No. 95–7687. MURPHY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 69 F. 3d 237.

No. 95–7688. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 69 F. 3d 538.

No. 95–7691. BETHANCOURT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 65 F. 3d 1074.

No. 95–7692. SALAZAR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 95–7697. DODDS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 59 F. 3d 179.

No. 95–7699. TROUT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 68 F. 3d 1276.

No. 95–7705. NORFUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 1284.

No. 95–7710. COLBERG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 69 F. 3d 538.

No. 95–7717. ROSS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1418.

No. 95–7727. HALE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 F. 3d 545.

No. 95–7732. COE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 69 F. 3d 549.

No. 95–7740. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 68 F. 3d 462.

No. 95–915. IN RE AEROQUIP CORP. ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 95–1016. QUICK *v.* NATIONAL AUTO CREDIT, INC., FKA AGENCY RENT-A-CAR, INC. C. A. 8th Cir. Motion of Kendrick

Wilhite for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 65 F. 3d 741.

No. 95–1018. KENTUCKY *v.* ELDRED. Sup. Ct. Ky. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 906 S. W. 2d 694.

No. 95–1023. TWENTY-THREE NINETEEN CREEKSIDE, INC., ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Motion of petitioners to strike the brief in opposition denied. Certiorari denied. Reported below: 59 F. 3d 130.

No. 95–1125. GENERAL PUBLIC UTILITIES CORP. ET AL. *v.* DODSON ET AL. C. A. 3d Cir. Motion of Edison Electric Institute et al. for leave to file a brief as *amici curiae* granted. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this motion and this petition. Reported below: 67 F. 3d 1103.

No. 95–1130. GRECO *v.* FITZPATRICK, CHIEF JUSTICE, PROBATE AND FAMILY COURT OF MASSACHUSETTS, ET AL. C. A. 1st Cir. Motion of petitioner to consider this case with No. 95–1207, *Greco* v. *Atwood & Cherny et al.*, denied. Certiorari denied. Reported below: 59 F. 3d 164.

Rehearing Denied

No. 94–8817. KINCHEN *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, 514 U. S. 1131;

No. 95–608. HOLYWELL CORP. ET AL. *v.* SMITH, INDIVIDUALLY AND AS TRUSTEE OF THE MIAMI CENTER LIQUIDATING TRUST, ET AL., *ante*, p. 1044;

No. 95–613. SARDUY *v.* SOUTHERN BELL TELEPHONE TELEGRAPHIC, INC., *ante*, p. 1044;

No. 95–676. GUEVARA *v.* MARITIME OVERSEAS CORP., *ante*, p. 1046;

No. 95–709. FORD MOTOR CO. ET AL. *v.* TEBBETTS, ADMINISTRATRIX OF THE ESTATE OF TEBBETTS, *ante*, p. 1072;

No. 95–6285. HIGH *v.* THOMAS, WARDEN, ET AL., *ante*, p. 1051;

No. 95–6704. CAREY *v.* ST. THERESA SCHOOL ET AL., *ante*, p. 1078; and

No. 95–6843. OBERMEYER *v.* UNITED STATES, *ante*, p. 1062. Petitions for rehearing denied.

FEBRUARY 27, 1996

Certiorari Denied

No. 95–8060 (A–711). GRANVIEL *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 81 F. 3d 156.

FEBRUARY 28, 1996

Dismissal Under Rule 46

No. 95–27. MERRILL ET AL. *v.* BARBOUR. C. A. D. C. Cir. [Certiorari granted, *ante*, p. 1086.] Writ of certiorari dismissed under this Court's Rule 46.1.

FEBRUARY 29, 1996

Miscellaneous Order

No. A–723. JAMES *v.* CAIN, WARDEN. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

Certiorari Denied

No. 95–8118 (A–722). LOYD *v.* LOUISIANA. Sup. Ct. La. Application for stay of execution of sentence of death of Antonio James, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 668 So. 2d 372.

MARCH 1, 1996

Dismissals Under Rule 46

No. 95–1160. TRACY *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.

No. 95–299. ARIZONA *v.* RENO, ATTORNEY GENERAL, ET AL. D. C. D. C. [Probable jurisdiction postponed, *ante*, p. 1020.] Appeal dismissed under this Court's Rule 46.1.

MARCH 4, 1996

Certiorari Granted—Vacated and Remanded

No. 95–315. UNITED STATES *v.* US WEST, INC., ET AL.; and UNITED STATES *v.* PACIFIC TELESIS GROUP ET AL. C. A. 9th

Cir. Certiorari granted, judgments vacated, and case remanded for consideration of the question whether it is moot. Reported below: 48 F. 3d 1092 (first judgment) and 1106 (second judgment).

No. 95–7015. SANTOS ET AL. *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 64 F. 3d 41.

No. 95–7059. LAMB *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 65 F. 3d 631.

No. 95–7289. HINES *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 65 F. 3d 392.

Miscellaneous Orders

No. 95–129. EXXON CO., U. S. A., ET AL. *v.* SOFEC, INC., ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 983.] Motion of respondents for divided argument denied.

No. 95–325. UNITED STATES *v.* REORGANIZED CF&I FABRICATORS OF UTAH, INC., ET AL. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1005.] Motion of United Steelworkers of America, AFL–CIO, for leave to file a brief as *amicus curiae* granted.

No. 95–345. UNITED STATES *v.* URSERY. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1070]; and

No. 95–346. UNITED STATES *v.* $405,089.23 IN UNITED STATES CURRENCY ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1070.] Motion of Advocates for Highway and Auto Safety et al. for leave to file a brief as *amici curiae* in No. 95–346 granted. Motion of Americans for Effective Law Enforcement, Inc., et al. for leave to file a brief as *amici curiae* granted.

No. 95–386. RICHARDS ET AL. *v.* JEFFERSON COUNTY, ALABAMA, ET AL. Sup. Ct. Ala. [Certiorari granted, *ante*, p. 983.]

Motion of National Association of Counties et al. for leave to file a brief as *amici curiae* granted.

No. 95–642. FRIEND *v.* UNITED STATES, *ante*, p. 1093. The Solicitor General is invited to file a response to the petition for rehearing within 30 days.

No. 95–7372. GUESS *v.* KARNES, SHERIFF, FRANKLIN COUNTY, OHIO. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until March 25, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 95–7776. IN RE KENNEDY;
No. 95–7788. IN RE ROBINSON;
No. 95–7836. IN RE COTTON; and
No. 95–7869. IN RE BAKER. Petitions for writs of habeas corpus denied.

No. 95–7352. IN RE ROBINSON; and
No. 95–7365. IN RE MCQUEEN. Petitions for writs of mandamus denied.

Certiorari Granted

No. 94–1988. CAMPS NEWFOUND/OWATONNA, INC. *v.* TOWN OF HARRISON, MAINE, ET AL. Sup. Jud. Ct. Me. Certiorari granted. Reported below: 655 A. 2d 876.

No. 95–891. OHIO *v.* ROBINETTE. Sup. Ct. Ohio. Certiorari granted. Reported below: 73 Ohio St. 3d 650, 653 N. E. 2d 695.

Certiorari Denied

No. 95–548. MARTIN ET AL. *v.* DRUMMOND CO., INC., ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 663 So. 2d 937.

No. 95–599. ILLINOIS CENTRAL RAILROAD *v.* DEBIASIO. C. A. 7th Cir. Certiorari denied. Reported below: 52 F. 3d 678.

No. 95–690. FRIEDMAN *v.* GRIEVANCE COMMITTEE FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 51 F. 3d 20.

No. 95–831. CANAVERAL PORT AUTHORITY ET AL. *v.* INTERNATIONAL LONGSHOREMEN'S ASSN., AFL–CIO, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 205.

No. 95–841. AKINS ET AL. *v.* ZENECA, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1417.

No. 95–848. WRIGHT ET VIR *v.* METROHEALTH MEDICAL CENTER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 58 F. 3d 1130.

No. 95–857. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 181.

No. 95–875. COUNTS *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 66 F. 3d 345.

No. 95–880. TATUM ET AL. *v.* COLUMBIA NATURAL RESOURCES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 58 F. 3d 1101.

No. 95–924. PATTERSON ET AL. *v.* NATIONSBANK OF TEXAS, N. A., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 469.

No. 95–964. POLK COUNTY, IOWA, ET AL. *v.* BROWN. C. A. 8th Cir. Certiorari denied. Reported below: 61 F. 3d 650.

No. 95–995. MURPHEY FAVRE, INC., ET AL. *v.* LYNN ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 273 Mont. 535, 903 P. 2d 221.

No. 95–1051. LIFE CARE CENTERS OF AMERICA, INC., ET AL. *v.* EAST HAMPDEN ASSOCIATES LIMITED PARTNERSHIP ET AL. Ct. App. Colo. Certiorari denied. Reported below: 903 P. 2d 1180.

No. 95–1054. K. W. THOMPSON TOOL CO., DBA THOMPSON CENTER ARMS *v.* PUMPHREY, INDIVIDUALLY AND GUARDIAN AD LITEM FOR SPARKS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1128.

No. 95–1062. BLAKENEY ET AL. *v.* LOMAS INFORMATION SYSTEMS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 65 F. 3d 482.

No. 95–1064. SERFECZ ET AL. *v.* JEWEL FOOD STORES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 67 F. 3d 591.

No. 95–1066. SIMONE ET UX. *v.* WORCESTER COUNTY INSTITUTION FOR SAVINGS. C. A. 1st Cir. Certiorari denied. Reported below: 52 F. 3d 309.

No. 95–1068. NORFOLK & WESTERN RAILWAY CO. *v.* LUTHER. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 272 Ill. App. 3d 16, 649 N. E. 2d 1000.

No. 95–1069. HOFFMAN CONTROLS CORP. *v.* BURGESS-SAIA, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 69 F. 3d 535.

No. 95–1094. BANFIELD, EXECUTRIX OF THE ESTATE OF BANFIELD, DECEASED, ET AL. *v.* TURNER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 325.

No. 95–1124. BLUE CROSS AND BLUE SHIELD OF VIRGINIA *v.* BAILEY. C. A. 4th Cir. Certiorari denied. Reported below: 67 F. 3d 53.

No. 95–1135. OZGA ENTERPRISES, INC. *v.* WISCONSIN DEPARTMENT OF NATURAL RESOURCES ET AL. Ct. App. Wis. Certiorari denied. Reported below: 196 Wis. 2d 644, 539 N. W. 2d 335.

No. 95–1142. NORTHRUP ET AL. *v.* SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 66 F. 3d 347.

No. 95–1158. BROWN ET AL. *v.* HOT, SEXY & SAFER PRODUCTIONS, INC., ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 68 F. 3d 525.

No. 95–1169. THOMAS & BETTS CORP. ET AL. *v.* PANDUIT CORP. C. A. 7th Cir. Certiorari denied. Reported below: 65 F. 3d 654.

No. 95–1172. SANJUAN ET AL. *v.* AMERICAN BOARD OF PSYCHIATRY & NEUROLOGY, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 40 F. 3d 247.

No. 95–1183. MORRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 65 F. 3d 82.

No. 95–1209. CUENCA *v.* DEPARTMENT OF EDUCATION. C. A. 10th Cir. Certiorari denied. Reported below: 64 F. 3d 669.

No. 95–1210. LELAND *v.* MORRIS ET AL. Ct. App. Cal., 4th App. Dist. Certiorari denied.

No. 95–1215. MIN-JU CHANG *v.* PENA, SECRETARY OF TRANSPORTATION. C. A. 3d Cir. Certiorari denied.

No. 95–1220. PUGLIATTI *v.* PENNSYLVANIA WORKMEN'S COMPENSATION BOARD. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1257.

No. 95–1231. BIC CORP. *v.* BEAN ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 669 So. 2d 840.

No. 95–1235. TINO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 64 F. 3d 664.

No. 95–1238. PANIS *v.* MISSION HILLS BANK, N. A., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 60 F. 3d 1486.

No. 95–1253. ALEEM *v.* INTERNATIONAL UNION OF AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 52 F. 3d 324.

No. 95–6737. HOCK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 59 F. 3d 176.

No. 95–6925. VELASQUEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 62 F. 3d 1420.

No. 95–7295. OMARA *v.* INTERNATIONAL SERVICE SYSTEMS, INC. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 213 App. Div. 2d 246, 624 N. Y. S. 2d 388.

No. 95–7300. MCGINNIS ET AL. *v.* BLODGETT, DEPUTY DIRECTOR, WASHINGTON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 307.

No. 95–7303. JONES *v.* WILLIAMS ET AL. C. A. 8th Cir. Certiorari denied.

No. 95–7305. JONES *v.* SCHLEICHER ET AL. C. A. 6th Cir. Certiorari denied.

No. 95–7312. MUZAKKIR *v.* VILLASENOR. C. A. 9th Cir. Certiorari denied. Reported below: 65 F. 3d 175.

No. 95–7322. ECHOLS *v.* AMERICAN FORK INVESTORS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 64 F. 3d 669.

No. 95–7328. POWELL *v.* CARNAHAN, GOVERNOR OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 95–7335. WILLIAMS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 153, 652 N. E. 2d 721.

No. 95–7339. VAN DUREN *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 95–7340. RANDLE *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 70 F. 3d 1268.

No. 95–7341. SPREMO *v.* BABCHIK ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 216 App. Div. 2d 382, 628 N. Y. S. 2d 167.

No. 95–7343. PREVOT *v.* PREVOT. C. A. 6th Cir. Certiorari denied. Reported below: 59 F. 3d 556.

No. 95–7344. SIMPSON *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 341 N. C. 316, 462 S. E. 2d 191.

No. 95–7346. CHRISTIAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 215 App. Div. 2d 493, 640 N. Y. S. 2d 757.

No. 95–7348. GONZALEZ *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 400.

No. 95–7349. DESIR *v.* JACKSON MEMORIAL HOSPITAL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 182.

No. 95–7355. BROWNLOW *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 66 F. 3d 997.

No. 95–7357. BARAKETT *v.* VIRGINIA. Ct. App. Va. Certiorari denied.

No. 95–7360. McGAHEE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 444 Pa. Super. 680, 663 A. 2d 250.

No. 95–7362. JUDY *v.* CARNAHAN, GOVERNOR OF MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 95–7364. LIGHTFOOT *v.* BIENVENU, JUDGE, 16TH JUDICIAL DISTRICT, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 466.

No. 95–7367. SCHAMBER *v.* THOMAS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 69 F. 3d 551.

No. 95–7376. HAMAN *v.* KING ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 56 F. 3d 1388.

No. 95–7386. BERRY *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 61 F. 3d 915.

No. 95–7409. CROSS *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 95–7425. LINDER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–7429. BOWLES *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 533 N. W. 2d 617.

No. 95–7447. TURNER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 650 N. E. 2d 705.

No. 95–7475. FINCH *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 325.

No. 95–7484. REEVES *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 472.

No. 95–7503. GONZALES *v.* TANSY, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 65 F. 3d 178.

No. 95–7510. ASHE *v.* STYLES, SUPERINTENDENT, YANCEY CORRECTIONAL CENTER, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 67 F. 3d 46.

No. 95–7586. HICKS *v.* SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO. Ct. App. Cal., 4th App. Dist. Certiorari denied. Reported below: 36 Cal. App. 4th 1649, 43 Cal. Rptr. 2d 269.

No. 95–7599. LEVI *v.* HAWK, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–7603. JACKSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 272 Ill. App. 3d 1109, 688 N. E. 2d 388.

No. 95–7605. NUSS *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. 10th Cir. Certiorari denied. Reported below: 69 F. 3d 548.

No. 95–7624. CURIALE *v.* SEDWICK, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA. C. A. 9th Cir. Certiorari denied.

No. 95–7627. HEATH *v.* GUNTER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 64 F. 3d 669.

No. 95–7628. EDMOND *v.* HARGETT, SUPERINTENDENT, MISSISSIPPI STATE PENITENTIARY. C. A. 5th Cir. Certiorari denied.

No. 95–7629. HAWKINS *v.* RIVELAND, SECRETARY, WASHINGTON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1424.

No. 95–7631. DREAD *v.* MARYLAND STATE POLICE. Ct. Sp. App. Md. Certiorari denied.

No. 95–7654. GARCHOW *v.* CHATER, COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied.

No. 95–7670. COLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 61 F. 3d 24.

No. 95–7695. STUMP *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 72 F. 3d 125.

No. 95–7703. HAWKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 F. 3d 11.

No. 95–7706. MANN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 342.

No. 95–7707. WHITEHEAD *v.* DEUTCH, DIRECTOR OF CENTRAL INTELLIGENCE; and

No. 95–7708. WHITEHEAD *v.* DEUTCH, DIRECTOR OF CENTRAL INTELLIGENCE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 67 F. 3d 298.

No. 95–7715. CORREO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1257.

No. 95–7716. CHILDRESS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 1285.

No. 95–7719. WRIGHT, AKA DENVERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 59 F. 3d 168.

No. 95–7721. NORFUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 1284.

No. 95–7730. LEWIS *v.* UNITED STATES ATTORNEY ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 74 F. 3d 1249.

No. 95–7736. GRIGSBY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 F. 3d 545.

No. 95–7737. PINKSTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 875.

No. 95–7738. RUBIDOUX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 F. 3d 482.

No. 95–7741. PICCIOTTI *v.* SWEENEY. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 213 App. Div. 2d 911, 624 N. Y. S. 2d 974.

No. 95–7742. BYRD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 95–7743. VALDEZ ANDAVERDE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 1305.

No. 95–7745. CAUSLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 62 F. 3d 1425.

No. 95–7747. BONIFACIO AMPARO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 68 F. 3d 1222.

No. 95–7748. ARAFATI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 69 F. 3d 545.

No. 95–7753. ROMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 121.

No. 95–7754. BONNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 64 F. 3d 667.

No. 95–7762. OLIVER *v.* ZAVARAS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 74 F. 3d 1250.

No. 95–7763. PIPPENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 876.

No. 95–7764. CALDERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 74 F. 3d 1250.

No. 95–7767. ZURITA-RUIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 121.

No. 95–7768. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 931.

No. 95–7770. PAYNE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 63 F. 3d 1200.

No. 95–7773. CANIZALES-SATIZABAL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 73 F. 3d 364.

No. 95–7775. JOHNSON *v.* ABRAMAJTYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–7778. LAI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 913.

No. 95–7779. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 128.

No. 95–7783. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 F. 3d 1263.

No. 95–7792. FITZGERALD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 121.

No. 95–7793. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 69 F. 3d 542.

No. 95–7794. FLORES-GUZMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 121.

No. 95–7796. GREEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 95–7799. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 66 F. 3d 95.

No. 95–7803. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 1332.

No. 95–7805. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 466.

No. 95–7807. LEVY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 F. 3d 458.

No. 95–7809. KIRNON ET AL. *v.* SCHNEIDER, GOVERNOR OF THE VIRGIN ISLANDS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 311.

No. 95–7813. FLEMMINGS *v.* MORTON ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–7815. FLORENCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 59 F. 3d 1246.

No. 95–7828. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 877.

No. 95–7830. STAPLETON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 70 F. 3d 117.

No. 95–7832. SMITH ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 73 F. 3d 374.

No. 95–7834. ROGERS *v.* MCCAUGHTRY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–7840. DUCRET *v.* BEYER, ASSISTANT COMMISSIONER, NEW JERSEY DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–1133. FRANSEN ET AL. *v.* CONOCO, INC., FKA CONTINENTAL OIL CO., ET AL. C. A. 10th Cir. Certiorari de-

nied. JUSTICE O'CONNOR took no part in the consideration or decision of this petition. Reported below: 64 F. 3d 1481.

No. 95–7780. NICHOLS ET AL. *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner Ricardo Sanchez to amend the petition for writ of certiorari denied. Certiorari denied. Reported below: 60 F. 3d 831.

Rehearing Denied

No. 95–6262. OLTARZEWSKI *v.* MARTINEZ, WARDEN, ET AL., *ante*, p. 1013;

No. 95–6516. NOBLES *v.* METROPOLITAN TRANSIT AUTHORITY ET AL., *ante*, p. 1054;

No. 95–6630. WILLIAMS *v.* JABE, WARDEN, ET AL., *ante*, p. 1057;

No. 95–6680. TSIMBIDAROS *v.* CLINTON, PRESIDENT OF THE UNITED STATES, ET AL., *ante*, p. 1057;

No. 95–6684. GLASS *v.* DUCKWORTH, SUPERINTENDENT, INDIANA STATE REFORMATORY, *ante*, p. 1057;

No. 95–6706. HIGGINS *v.* CUOMO, FORMER GOVERNOR OF NEW YORK, ET AL., *ante*, p. 1058;

No. 95–6747. COLE *v.* CITY OF MILWAUKEE, WISCONSIN, ET AL., *ante*, p. 1078;

No. 95–6923. COOK *v.* WHITE, *ante*, p. 1081; and

No. 95–6927. ROWSER *v.* WAYNE CAR RELEASING SERVICES, INC., *ante*, p. 1081. Petitions for rehearing denied.

No. 94–2003. LOTUS DEVELOPMENT CORP. *v.* BORLAND INTERNATIONAL, INC., *ante*, p. 233. Petition for rehearing denied. JUSTICE STEVENS took no part in the consideration or decision of this petition.

MARCH 12, 1996

Dismissal Under Rule 46

No. 95–7898. STILES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari dismissed under this Court's Rule 46. Reported below: 902 P. 2d 1104.

MARCH 15, 1996

Miscellaneous Order

No. 95–386. RICHARDS ET AL. *v.* JEFFERSON COUNTY, ALABAMA, ET AL. Sup. Ct. Ala. [Certiorari granted, *ante*,

p. 983.] Writ of certiorari dismissed as improvidently granted to the extent that it includes the question whether the occupational tax challenged by petitioners violates the Equal Protection Clause of the United States Constitution. The parties are directed to address at oral argument only the remaining question: Whether the Due Process Clause of the United States Constitution prohibits the application of res judicata in this case.

MARCH 18, 1996

Certiorari Granted—Reversed and Remanded. (See No. 95–1025, *ante*, p. 474.)

Certiorari Granted—Vacated and Remanded

No. 95–6759. HAWKINS *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner to amend petition for writ of certiorari granted. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Bailey* v. *United States*, *ante*, p. 137. Reported below: 59 F. 3d 723.

Certiorari Dismissed

No. 95–7528. JACKSON *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari dismissed.

Miscellaneous Orders

No. D–1590. IN RE DISBARMENT OF SMITH. Motion to recall and amend the judgment denied. [For earlier order herein, see, *e. g.*, *ante*, p. 984.]

No. D–1625. IN RE DISBARMENT OF GAJEWSKI. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–1627. IN RE DISBARMENT OF RICHARDS. Disbarment entered. [For earlier order herein, see *ante*, p. 1038.]

No. D–1630. IN RE DISBARMENT OF TOMS. James Huston Toms, of Hendersonville, N. C., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on January 8, 1996 [*ante*, p. 1039], is discharged.

No. D–1631. IN RE DISBARMENT OF CASSELL. Disbarment entered. [For earlier order herein, see *ante*, p. 1039.]

No. D–1635. IN RE DISBARMENT OF MCGLORY. Disbarment entered. [For earlier order herein, see *ante*, p. 1090.]

No. D–1639. IN RE DISBARMENT OF FARRELL. Disbarment entered. [For earlier order herein, see *ante*, p. 1106.]

No. D–1642. IN RE DISBARMENT OF O'KEEFE. Michael P. O'Keefe, of Lenexa, Kan., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on February 20, 1996 [*ante*, p. 1107], is discharged.

No. D–1649. IN RE DISBARMENT OF STIGLER. It having been reported that David D. Stigler, of Fort Worth, Tex., has died, the rule to show cause, issued on February 20, 1996 [*ante*, p. 1108], is discharged.

No. D–1657. IN RE DISBARMENT OF DAMERON. Thomas H. Dameron, of Alexandria, Va., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1658. IN RE DISBARMENT OF BRUCKNER. Richard J. Bruckner, of Omaha, Neb., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1659. IN RE DISBARMENT OF BERG. Howard M. Berg, of Boca Raton, Fla., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1660. IN RE DISBARMENT OF TIGHE. Charles I. Tighe III, of Mt. Laurel, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–1661. IN RE DISBARMENT OF REEVES. Weldon Ray Reeves, of Sacramento, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. M–48. LUNA *v.* MERIT SYSTEMS PROTECTION BOARD. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 95–6510. GRAY *v.* NETHERLAND, WARDEN. C. A. 4th Cir. [Certiorari granted, *ante*, p. 1037.] Motion for appointment of counsel granted, and it is ordered that Mark E. Olive, Esq., of Richmond, Va., be appointed to serve as counsel for petitioner in this case.

No. 95–6710. ATTWOOD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 297] denied.

No. 95–7514. SHIEH *v.* STATE BAR OF CALIFORNIA. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. See this Court's Rule 39.8. Petitioner is allowed until April 8, 1996, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 95–7473. IN RE HAWKS;
No. 95–7536. IN RE KINDER;
No. 95–7806. IN RE JOHNSON; and
No. 95–7900. IN RE ROBINSON. Petitions for writs of mandamus denied.

No. 95–7538. IN RE LORENZ; and
No. 95–7733. IN RE USHER. Petitions for writs of mandamus and/or prohibition denied.

Certiorari Granted

No. 95–939. IMMIGRATION AND NATURALIZATION SERVICE *v.* ELRAMLY. C. A. 9th Cir. Certiorari granted. Reported below: 73 F. 3d 220.

No. 95–1065. SCHENCK ET AL. *v.* PRO-CHOICE NETWORK OF WESTERN NEW YORK ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 67 F. 3d 377.

No. 95–259. WALTERS *v.* METROPOLITAN EDUCATIONAL ENTERPRISES, INC., ET AL.; and

No. 95–779. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION *v.* METROPOLITAN EDUCATIONAL ENTERPRISES, INC., ET AL. C. A. 7th Cir. Certiorari granted, cases consolidated, and a total of one hour allotted for oral argument. Reported below: 60 F. 3d 1225.

Certiorari Denied

No. 95–331. SIVASKANDAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 53 F. 3d 108.

No. 95–481. CITY OF CARLSBAD ET AL. *v.* WARREN. C. A. 9th Cir. Certiorari denied. Reported below: 58 F. 3d 439.

No. 95–744. GILBERT *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 56 F. 3d 1438.

No. 95–793. AMERICAN TRAIN DISPATCHERS ASSN. *v.* SURFACE TRANSPORTATION BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 54 F. 3d 842.

No. 95–929. ADHIYAPPA *v.* IMMIGRATION AND NATURALIZATION SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 58 F. 3d 261.

No. 95–931. UPS WORLDWIDE FORWARDING, INC. *v.* UNITED STATES POSTAL SERVICE; and

No. 95–944. AIR COURIER CONFERENCE OF AMERICA/INTERNATIONAL COMMITTEE *v.* UNITED STATES POSTAL SERVICE. C. A. 3d Cir. Certiorari denied. Reported below: 66 F. 3d 621.

No. 95–948. TERM AUTO SALES, INC., ET AL. *v.* CITY OF CLEVELAND ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 54 F. 3d 777.

No. 95–953. LIBERTY CABLE CO., INC. *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 60 F. 3d 961.

No. 95–962. CSX TRANSPORTATION, INC., ET AL. *v.* FRITSCH ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 59 F. 3d 248.

No. 95–975. BISKUP *v.* MCCAUGHTRY. C. A. 7th Cir. Certiorari denied. Reported below: 20 F. 3d 245.

No. 95–990. JONES *v.* WEST, SECRETARY OF THE ARMY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 63 F. 3d 1112.

No. 95–1031. GHENT *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–1083. DAUGHERTY *v.* CITY OF EL PASO, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 695.

No. 95–1085. PARKER *v.* EVENING POST PUBLISHING CO. ET AL. Ct. App. S. C. Certiorari denied. Reported below: 317 S. C. 236, 452 S. E. 2d 640.

No. 95–1097. HOGAN ET AL. *v.* VILLAGE OF LAKE BARRINGTON, ILLINOIS, ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 272 Ill. App. 3d 225, 649 N. E. 2d 1366.

No. 95–1104. OWEN *v.* CALIFORNIA STATE BAR ET AL. Sup. Ct. Cal. Certiorari denied.

No. 95–1105. CINCINNATI REDS *v.* BRIDEWELL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 68 F. 3d 136.

No. 95–1106. PARSA *v.* WHITE, DIRECTOR, ALABAMA FINANCE DEPARTMENT, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 183.

No. 95–1110. BLUMEYER ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 62 F. 3d 1013.

No. 95–1111. ESTATE OF MENNA ET AL. *v.* ST. AGNES MEDICAL CENTER. C. A. 3d Cir. Certiorari denied.

No. 95–1113. STELWAGON MANUFACTURING CO. *v.* TARMAC ROOFING SYSTEMS, INC. C. A. 3d Cir. Certiorari denied. Reported below: 63 F. 3d 1267.

No. 95–1115. FLAKT, INC. *v.* JOY TECHNOLOGIES, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 60 F. 3d 843.

No. 95–1116. IRVING *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied. Reported below: 665 A. 2d 980.

No. 95–1117. LEGER *v.* ADAMS, MASSACHUSETTS COMMISSIONER OF REVENUE. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 421 Mass. 168, 654 N. E. 2d 927.

No. 95–1122. THOMAS *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 95–1126. IDAHO *v.* GAFFORD. Sup. Ct. Idaho. Certiorari denied. Reported below: 127 Idaho 472, 903 P. 2d 61.

No. 95–1127. TRI-COUNTY INDUSTRIES, INC. *v.* MERCER COUNTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 68 F. 3d 788.

No. 95–1131. JONES *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 340 Md. 235, 666 A. 2d 128.

No. 95–1132. HALL *v.* SAVINGS OF AMERICA. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 470.

No. 95–1136. MURRAY *v.* DETROIT RIVERVIEW HOSPITAL ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 65 F. 3d 168.

No. 95–1137. BRACH *v.* CONGREGATION YETEV LEV D'SATMAR, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 57 F. 3d 1064.

No. 95–1140. SHIN CHONG YONG *v.* GANNETT OUTDOOR CO., INC. OF SOUTHERN CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 119.

No. 95–1141. BEDDINGFIELD ET AL. *v.* ALLEGHENY COUNTY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 60 F. 3d 1010.

No. 95–1152. CHIRICO ET AL. *v.* TOWNSHIP OF NEWTOWN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1255.

No. 95–1153. BOYLE ET AL. *v.* SMITH, COMMISSIONER, MINNESOTA DEPARTMENT OF REVENUE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 68 F. 3d 1093.

No. 95–1157. MCPHERSON *v.* BRICKLEY ET AL. Ct. App. Mich. Certiorari denied.

No. 95–1161. LEECO, INC. *v.* BURNS ET AL. Sup. Ct. Ky. Certiorari denied.

No. 95–1165. MOORE ET UX. *v.* PATTERSON, BELKNAP, WEBB & TYLER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 71 F. 3d 406.

No. 95–1166. MCDONALD ET UX., INDIVIDUALLY AND AS NEXT FRIENDS AND GUARDIANS OF MCDONALD, A MINOR, ET AL. *v.* PROVIDENT INDEMNITY LIFE INSURANCE CO. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 60 F. 3d 234.

No. 95–1174. GHALI *v.* KENTUCKY. Cir. Ct. Campbell County, Ky. Certiorari denied.

No. 95–1177. CHATTERJEE *v.* CITY OF BATON ROUGE ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 655 So. 2d 813.

No. 95–1179. NEIGHBOUR *v.* COVERT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 68 F. 3d 1508.

No. 95–1180. JONES *v.* FULTON COUNTY BOARD OF COMMISSIONERS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 62 F. 3d 402.

No. 95–1188. CLARKE *v.* HALL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1255.

No. 95–1189. URBAN *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 20 Kan. App. 2d xxx, 890 P. 2d 1253.

No. 95–1192. TITAN SPORTS, INC., DBA WORLD WRESTLING FEDERATION *v.* VENTURA, DBA JESSE "THE BODY" VENTURA, AKA JANOS. C. A. 8th Cir. Certiorari denied. Reported below: 65 F. 3d 725.

No. 95–1203. MCCOY ET AL. *v.* MITSUBOSHI CUTLERY, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 67 F. 3d 917.

No. 95–1207. GRECO *v.* ATWOOD & CHERNY ET AL. App. Ct. Mass. Certiorari denied. Reported below: 38 Mass. App. 1126, 650 N. E. 2d 828.

No. 95–1237. BLACK *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 95–1241. WACEK ET UX. *v.* VAVRICKA, FKA AAKRE, ET AL. Ct. App. Minn. Certiorari denied.

No. 95–1254. ELTON ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 69 F. 3d 542.

No. 95–1272. HUBBARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 61 F. 3d 1261.

No. 95–1278. LUCILLE *v.* CITY OF CHICAGO ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–1287. FAUST *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 95–1290. GABOVITCH *v.* SHEAR ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 70 F. 3d 1252.

No. 95–1306. BRINK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 95–6660. GILDAY *v.* CALLAHAN, SUPERINTENDENT, MCI NORFOLK. C. A. 1st Cir. Certiorari denied. Reported below: 59 F. 3d 257.

No. 95–6675. CLARK *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 95–6817. MONDAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 58 F. 3d 640.

No. 95–7020. JACKSON, AKA KING *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 468.

No. 95–7025. BREELAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 F. 3d 457.

No. 95–7050. ROBERTS *v.* LONG BEACH UNIFIED SCHOOL DISTRICT. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 95–7061. RIVERS *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 537 Pa. 394, 644 A. 2d 710.

No. 95–7071. BYRD *v.* SINGLETARY, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 655 So. 2d 67.

No. 95–7131. XIN-CHANG ZHANG *v.* SLATTERY, DISTRICT DIRECTOR, NEW YORK DISTRICT OF THE IMMIGRATION AND NATURALIZATION SERVICE, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 55 F. 3d 732.

No. 95–7137. BARLEY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 906 S. W. 2d 27.

No. 95–7140. VANEATON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 49 F. 3d 1423.

No. 95–7215. HORTON *v.* DEPARTMENT OF THE NAVY ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 66 F. 3d 279.

No. 95–7242. BONDS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 68 F. 3d 474.

No. 95–7368. BAKER *v.* KANSAS CITY, MISSOURI, ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 904 S. W. 2d 283.

No. 95–7369. LUKER *v.* MILLER. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 266 Ill. App. 3d 1137, 684 N. E. 2d 464.

No. 95–7373. GUEST *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 166 Ill. 2d 381, 655 N. E. 2d 873.

No. 95–7381. SHEPHERD *v.* ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–7385. SMITH *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied.

No. 95–7391. WHITEHEAD *v.* UPLAND MORTGAGE CORP. ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–7395. MARK K. *v.* JOHN S. ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 10 Cal. 4th 1043, 898 P. 2d 891.

No. 95–7398. CANNON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 904 P. 2d 89.

No. 95–7405. SANDERS *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 336.

No. 95–7413. SALZER *v.* STINSON. C. A. 7th Cir. Certiorari denied. Reported below: 52 F. 3d 708.

No. 95–7417. ARTEAGA *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 95–7418. BEAR *v.* WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 334.

No. 95–7419. NASIM *v.* WARDEN, MARYLAND HOUSE OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 951.

No. 95–7420. KILLS ON TOP *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 273 Mont. 32, 901 P. 2d 1368.

No. 95–7421. BURTON *v.* ECONOMUS, JUDGE, COURT OF COMMON PLEAS, MAHONING COUNTY, OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 68 F. 3d 474.

No. 95–7424. AKERS *v.* FITZGERALD ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 69 F. 3d 536.

No. 95–7443. ROSSI *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 95–7448. WILCZYNSKI *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 891 P. 2d 998.

No. 95–7457. RIVERS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 265 Ga. 694, 461 S. E. 2d 205.

No. 95–7458. ROUNTREE *v.* MENGEL, CLERK, SUPREME COURT OF OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 74 Ohio St. 3d 1402, 655 N. E. 2d 182.

No. 95–7461. THOMAS *v.* HEISE. Ct. App. Minn. Certiorari denied.

No. 95–7467. WILLIS *v.* MATSON PLASTERING CO., INC., ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 95–7469. GUMM *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 413, 653 N. E. 2d 253.

No. 95–7472. HARJU *v.* DUNCAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 57 F. 3d 1077.

No. 95–7474. DAVIS *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 658 N. E. 2d 896.

No. 95–7478. RODRIGUEZ *v.* WOLF, JUDGE, DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 663 So. 2d 631.

No. 95–7482. SHOWN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 95–7486. WALLACE *v.* IEYOUB, ATTORNEY GENERAL OF LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 68 F. 3d 466.

No. 95–7496. COVILLION *v.* NEW HAMPSHIRE ET AL. C. A. 1st Cir. Certiorari denied.

No. 95–7497. GEORGE *v.* KEANE, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 95–7504. DEVER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 722, 654 N. E. 2d 1249.

No. 95–7507. HIGGASON *v.* HANKS, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL INSTITUTE. C. A. 7th Cir. Certiorari denied.

No. 95–7509. ALLEN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 626, 653 N. E. 2d 675.

No. 95–7518. STUCKEY *v.* THOMPSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 95–7519. SCHLEEPER *v.* GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 70 F. 3d 118.

No. 95–7527. LUNDGREN *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 474, 653 N. E. 2d 304.

No. 95–7529. JOSEPH *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 73 Ohio St. 3d 450, 653 N. E. 2d 285.

No. 95–7547. SCRIVNER *v.* TANSY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 68 F. 3d 1234.

No. 95–7550. PENDLETON *v.* VANCE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 67 F. 3d 300.

No. 95–7557. WASHINGTON *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 164 Vt. 609, 669 A. 2d 550.

No. 95–7558. THOMAS *v.* WHITE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 95–7559. WILLIAMS *v.* WASHINGTON, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. C. A. 7th Cir. Certiorari denied.

No. 95–7585. OSIRIS FLORES *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 95–7592. FIELD *v.* BROWN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 66 F. 3d 344.

No. 95–7606. LUNA *v.* LACY. Ct. App. Ohio, Huron County. Certiorari denied.

No. 95–7607. SOCORRO *v.* THURMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 67 F. 3d 308.

No. 95–7619. CHAPMAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 272 Ill. App. 3d 1106, 688 N. E. 2d 387.

No. 95–7630. GHAEMMAGHAMI *v.* LOCAL UNION No. 11, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO. C. A. 9th Cir. Certiorari denied.

No. 95–7634. FULLER *v.* VIRGINIA ET AL.; and FULLER *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 54 F. 3d 773 (first judgment); 60 F. 3d 821 (second judgment).

No. 95–7637. MCDONALD *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied.

No. 95–7646. FITZGERALD *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 249 Va. 299, 455 S. E. 2d 506.

No. 95–7674. ORTEGA *v.* PRICE CITY, UTAH. Ct. App. Utah. Certiorari denied.

No. 95–7689. WALKER *v.* CITY OF AMES, IOWA. Dist. Ct. Iowa, Story County. Certiorari denied.

No. 95–7704. BRYANT *v.* MCDADE, SUPERINTENDENT, HARNETT CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 68 F. 3d 459.

No. 95–7712. SHERMAN *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 62 F. 3d 136.

No. 95–7722. JOHNSON *v.* WELBY ET AL. C. A. 3d Cir. Certiorari denied.

No. 95–7723. LEONARD *v.* OHIO. Ct. App. Ohio, Lawrence County. Certiorari denied.

No. 95–7734. STEVENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 95–7739. GUERRERO *v.* RYAN, SECRETARY OF STATE OF ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 272 Ill. App. 3d 945, 651 N. E. 2d 586.

No. 95–7746. TINES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 70 F. 3d 891.

No. 95–7755. BURNETTE *v.* CAIN, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 56 F. 3d 1384.

No. 95–7757. SEGUIN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 421 Mass. 243, 656 N. E. 2d 1229.

No. 95–7761. CALHOUN *v.* HUSKISSON ET AL. C. A. 7th Cir. Certiorari denied.

No. 95–7772. SMITH *v.* RICHARDSON, COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 70 F. 3d 1257.

No. 95–7781. NAGOL *v.* NEW MEXICO. Ct. App. N. M. Certiorari denied.

No. 95–7784. LAVE *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 95–7786. KLEIN *v.* ANDALMAN. C. A. 8th Cir. Certiorari denied.

No. 95–7787. LORENZ *v.* LORENZ. Ct. App. Iowa. Certiorari denied. Reported below: 548 N. W. 2d 192.

No. 95–7791. HOPGOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 65 F. 3d 183.

No. 95–7797. GOODING ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 F. 3d 297.

No. 95–7808. LUCKETT, AKA CLARK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 53 F. 3d 340.

No. 95–7811. GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 121.

No. 95–7825. WILSON, AKA WHALEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 68 F. 3d 479.

No. 95–7826. WHITMORE *v.* AVERY, SUPERINTENDENT, COMMUNITY CORRECTIONS CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 63 F. 3d 688.

No. 95–7837. WATERS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 876.

No. 95–7841. EDELSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 68 F. 3d 457.

No. 95–7843. HUERTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 1281.

No. 95–7844. HAYDEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 77 F. 3d 465.

No. 95–7846. HODGE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 65 F. 3d 962.

No. 95–7847. HENDERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 1284.

No. 95–7848. FARRELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 69 F. 3d 891.

No. 95–7855. MORRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 67 F. 3d 298.

No. 95–7858. MARUTZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 77 F. 3d 491.

No. 95–7859. MILBRAND *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 58 F. 3d 841.

No. 95–7860. MCCRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 1286.

No. 95–7862. RUGGLES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 70 F. 3d 262.

No. 95–7865. BEHRINGER *v.* JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION (two judgments). C. A. 5th Cir. Certiorari denied. Reported below: 75 F. 3d 187 (first judgment) and 189 (second judgment).

No. 95–7866. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 69 F. 3d 27.

No. 95–7870. BAKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 71 F. 3d 876.

No. 95–7874. CHAVEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 66 F. 3d 327.

No. 95–7877. RAMEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 F. 3d 1264.

No. 95–7879. ROSS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 70 F. 3d 1285.

No. 95–7883. VEGA-SOTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 1281.

No. 95–7890. OWENS *v.* PHILLIPS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–7891. ESPINAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 71 F. 3d 881.

No. 95–7897. BAKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 121.

No. 95–7903. CARR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 67 F. 3d 171.

No. 95–7904. WELLS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 66 F. 3d 342.

No. 95–7906. GRAHAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 72 F. 3d 352.

No. 95–7907. HEREFORD *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 195 Wis. 2d 1054, 537 N. W. 2d 62.

No. 95–7909. GUIDRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 66 F. 3d 336.

No. 95–7914. STONIER ET UX. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 48 F. 3d 1233.

No. 95–7923. WOODFORK, AKA WOODFOLK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 656 A. 2d 1145.

No. 95–7924. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 62 F. 3d 1418.

No. 95–7929. LACY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 95–7930. LAI ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 61 F. 3d 913.

No. 95–7931. MOORE *v.* CARLTON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 74 F. 3d 689.

No. 95–7932. MCKINNEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 70 F. 3d 113.

No. 95–7934. WALLACE *v.* SMITH, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 72 F. 3d 128.

No. 95–7939. SANCHEZ *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 95–7957. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 64 F. 3d 661.

No. 95–7959. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 70 F. 3d 121.

No. 95–7960. VAN FRIPP *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 72 F. 3d 887.

No. 95–7978. LEMON *v.* JOHNSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 95–942. DEAN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS took no part in the consideration or decision of this petition. Reported below: 55 F. 3d 640.

No. 95–984. STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. *v.* NEW JERSEY COMMISSIONER OF INSURANCE ET AL. Super. Ct. N. J., App. Div. Motion of Illinois for leave to file a brief as *amicus curiae* out of time denied. Certiorari denied.

No. 95–1082. NIPPON CARBIDE INDUSTRIES CO., INC. *v.* MINNESOTA MINING & MANUFACTURING CO., INC. C. A. 8th Cir. Motion of Association of International Automobile Manufacturers for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 63 F. 3d 694.

No. 95–1118. BLUE CROSS & BLUE SHIELD UNITED OF WISCONSIN ET AL. *v.* MARSHFIELD CLINIC ET AL. C. A. 7th Cir. Motion of Blue Cross and Blue Shield Association for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 65 F. 3d 1406.

No. 95–1128. PHILADELPHIA REINSURANCE CORP. ET AL. *v.* NORTH RIVER INSURANCE CO.; and

No. 95–1138. UNDERWRITERS AND UNDERWRITING SYNDICATES AT LLOYD'S ET AL. *v.* NORTH RIVER INSURANCE CO. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of these petitions. Reported below: 63 F. 3d 160.

No. 95–1154. DALKON SHIELD CLAIMANTS TRUST *v.* SHADBURNE-VINTON, NKA SHADBURNE. C. A. 4th Cir. Motion of Baxter Healthcare Corp. for leave to file a brief as *amicus curiae* granted. Certiorari denied. Reported below: 60 F. 3d 1071.

No. 95–1178. MARICOPA COUNTY *v.* JUNOT. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 67 F. 3d 307.

Rehearing Denied

No. 94–8915. BORKINS *v.* UNITED STATES POSTAL SERVICE ET AL., *ante*, p. 826;

No. 95–832. JENSEN *v.* RENO, ATTORNEY GENERAL OF THE UNITED STATES, *ante*, p. 1049;

No. 95–850. EL-ATTAR *v.* MISSISSIPPI STATE UNIVERSITY ET AL., *ante*, p. 1094;

No. 95–882. KELLY *v.* TREE FARM DEVELOPMENT CORP. ET AL., *ante*, p. 1094;

No. 95–5407. TIMBERLAKE *v.* LAMER, WARDEN, ET AL., *ante*, p. 1094;

No. 95–6385. ELFAKIR ET UX. *v.* AUTOMOBILE CLUB INSURANCE ASSOCIATES ET AL., *ante*, p. 1051;

No. 95–6546. TROTTIE *v.* SENKOWSKI, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, *ante*, p. 1054;

No. 95–6583. ARNDT *v.* BOWERSOX, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, *ante*, p. 1055;

No. 95–6601. WODKIEWICZ *v.* PATENT AND TRADEMARK OFFICE BOARD OF PATENT APPEALS AND INTERFERENCES, *ante*, p. 1056;

No. 95–6813. SLAPPY *v.* MOORE, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1095;

No. 95–6840. PRYOR *v.* CITY OF DESOTO, MISSOURI, ET AL., *ante*, p. 1095;

No. 95–6974. LEWIS *v.* RUNYON, POSTMASTER GENERAL, *ante*, p. 1081; and

No. 95–7180. JAFFER *v.* UNITED STATES, *ante*, p. 1128. Petitions for rehearing denied.

No. 95–371. DOUGLAS COUNTY, OREGON *v.* BABBITT, SECRETARY OF THE INTERIOR, ET AL., *ante*, p. 1042; and

No. 95–6558. ROSS *v.* ROCKWELL INTERNATIONAL ROCKETDYNE, *ante*, p. 1054. Motions for leave to file petitions for rehearing denied.

Reporter's Note

The next page is purposely numbered 1301. The numbers between 1185 and 1301 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

FEDERAL COMMUNICATIONS COMMISSION ET AL. *v.* RADIOFONE, INC.

ON APPLICATION TO VACATE STAY

No. A–368. Decided October 25, 1995

The Federal Communications Commission's application to vacate the Sixth Circuit's stay preventing the FCC from taking any action in furtherance of a nationwide auction of a portion of the electromagnetic spectrum is granted. Allowing the auction to proceed will not defeat the Sixth Circuit's power to grant appropriate relief in a pending challenge to FCC regulations that prevent respondent from bidding for 3 of the 493 licenses available. Moreover, the harm to the public caused by a nationwide postponement of the auction would outweigh the possible harm to respondent.

JUSTICE STEVENS, Circuit Justice.

The Federal Communications Commission (FCC) has applied to me in my capacity as Circuit Justice for the Sixth Circuit to vacate a stay entered by the Court of Appeals on October 18, 1995. The stay prevented the FCC from taking any action in furtherance of a nationwide auction of a portion of the electromagnetic spectrum. Apparently, the Court of Appeals feared that completion of the auction would moot a challenge pending before it to FCC regulations that prevent respondent from bidding for 3 of the 493 licenses available. I am persuaded, however, that allowing the national auction to go forward will not defeat the power of the Court of Appeals to grant appropriate relief in the event that respondent overcomes the presumption of validity that supports the FCC regulations and prevails on the merits. I am also persuaded that the harm to the public caused by a nationwide postponement of the auction would outweigh the possible

harm to respondent. I should point out that because respondent has not filed an opposition to the application, my opinion is based on the factual representations in the FCC's papers.

Accordingly, the application to vacate the stay is granted.

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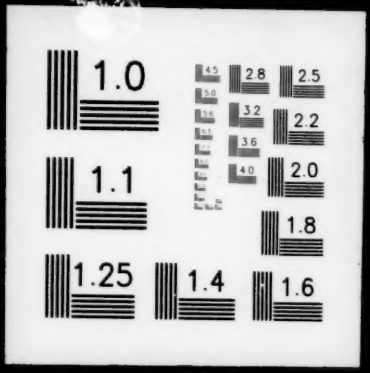
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